

***In the Court of Ravi Kumar Sondhi,
Additional Sessions Judge,
Chandigarh***

Session Case No : 2-A of 1995 (R
14.03.2003)

Computer ID No. : 36014R0122162003

Date of Institution: : 18.12.1995.

Date of Decision : 27.07.2007

Complainant: : State (through CBI)

Versus

Accused:

1. Gurmeet Singh alias Meeta
son of Sh. Jaswinder Singh,
R/o H.No.981, Phase IV,
SAS Nagar, Mohali (PB),
permanent address:
H.No.1431, Gali No.4,
Guru Nanak Nagar,
Patiala.
2. Lakhwinder Singh alias
Lakha alias Hero
son of Sh. Darshan Singh
r/o near Shiv Temple,
Village Kansal
District Ropar,
permanent address: H.No.156,
Gali No.9, Guru Nanak Nagar,
Opp. Gurbax Colony, Patiala.
3. Jagtar Singh alias Tara
son of Sh. Sadhu Singh
r/o 226/3, Arjun Nagar,
New Delhi;
permanent address:
Village Dekwala, P.S Sadar,
Ropar.
(Proclaimed Offender)

4. Navjot Singh
son of Sh.Tarlok Singh,
R/o H.No.889, Phase III-B-2
Mohali Distt. Ropar.
5. Nasib Singh
son of Sh. Bulant Singh
r/o Village Jhingra Kalan
Distt. Ropar (Punjab)
6. Shamsheer Singh
s/o Sh.Surjit Singh,
r/o Village Ukasi Jattan,
P.S. Sadar, Rajpura
Distt. Patiala (Punjab)
7. Balwant Singh
s/o Sh.Malkiat Singh,
r/o H.No.68-A, Rattan Nagar,
Patiala (Punjab)
permanent address: Village
Rajoana Kalan, P.S. Sudhar,
Distt.Ludhiana (Punjab)
8. Jagtar Singh Hawara
S/o Sh.Sher Singh,
r/o Village Hawara ,
Police Station Khamano,
Distt. Fatehgarh Sahib (Pb).

Name of the assassin : Dilawar Singh,
accused s/o Harnek Singh,
r/o H.No.23, Gali No.12
Guru Nanak Nagar,
Patiala.

F.I.R.No : 96 dated 31.8.1995

Police Station : North now Sector 3,
Chandigarh.

R.C.No. of CBI : 9/S/95 SIU.V/SIC.II/CBI
/DSPE, dated 1.9.1995.

Offence alleged : Under Sections 302, 307
read with Section 120-B
IPC and under Section 3
& 4 of the Explosive
Substances Act.

Date of Commitment : Vide orders dated
11.12.1995, 19.12.1995
and 19.2.1996
respectively.

Argued by : Sh.S.K.Saxena assisted by Sh.R.K.
Handa & Sh.Rajan Malhotra, Spl.P.P
for the CBI.

Sh.D.S.Chimney, Sh.A.S.Chahal,
Sh.R.C.Sharma and Sh.S.S.Bawa for
accused Gurmeet Singh, Navjot Singh,
Jagtar Singh Hawara, Shamsher
Singh, Lakhwinder Singh and
Nasib Singh.

Accused Balwant Singh in person.

Present: All the above accused in custody
except Accused Jagtar Singh Tara who
is declared proclaimed offender.

JUDGMENT:

31 August, 1995 was another **black day** for
the people of Punjab, when Shri Beant Singh, then
Chief Minister of Punjab, was assassinated in the
Porch of the Punjab & Haryana Civil Secretariat,

known to be the most secure place, being the seat of Capital of two States Punjab & Haryana. It is alleged that the assassin was Dilawar Singh, who was made to act as a human bomb and he got himself exploded at 5.10 P.M at a very close proximity to to the Beant Singh, who was to got into his Car for onward journey.

2. As per prosecution Shri Beant Singh, has been assassinated pursuant to a deep rooted criminal conspiracy master minded by Babbar khalsa International, an International Terrorist Organization as it perceived that Shri Beant Singh has usurped the power after 1992 election in the State of Punjab and is responsible for the indiscriminate atrocities against the innocent Sikhs. It was under these circumstances that all the above named accused persons were put on trial for this assassination being part and parcel of the well laid and deep rooted conspiracy for commission of the of offences punishable under sections 302,307 read with section 120-B of IPC and under section 3,4, and 5 of the Explosive Substances Act.

3. Initially, a case FIR No.96, dated 31.8.1995, was registered at Police Station, North, now Sector 3, Chandigarh for commission of offences under sections 302, 307 read with Section 120-B of the IPC and Section 3 & 4 of Explosive Substances

Act, on the statement of C.Pala Ram of Haryana Armed Police. However, later on the investigations of this case was transferred to Delhi Special Police Establishment (C.B.I) vide Ministry of Home Affairs, Government of India, New Delhi, letter No.406/JS(UT)/95/S dated 31.8.1995 and this case was re-registered as RC No.9(S)/95-SIU.V/CBI/SIC.II/New Delhi on 1.9.1995 under sections 302/307 read with Section 120-B of the Indian Penal Code and Section 3 & 4 of the Explosive Substance Act.

FACTUAL BACKGROUND OF THE CASE

4. The sequence of events along with a brief history of the factual back ground, which preceded and succeeded the assassination, as the same would unfurl the conspectus of the case and leading to the registration of this case and the prosecution of accused persons, in brief, is that a case vide FIR No.96/95 dated 31.8.1995 was registered at Police Station North, Chandigarh under Section 302/307/120-B IPC and Section 3, 4 of the Explosive Substances Act on the statement of Constable Pala Ram of Haryana Armed Police to the effect that he was on sentry duty on the VIP Gate of the Punjab and Haryana Civil Secretariat Chandigarh, in the evening of 31.8.1995. HC Ajaib Singh of Haryana Police and some other personnel of Punjab Police and Punjab Secretariat were also on duty at the

VIP gate along with him. The motor cavalcade of S.Beant Singh, then C.M Punjab, was lined up in the porch at about 5.05 p.m under the security cover of Punjab Police, NSG and other security personnel.

5. S.Beant Singh, then Chief Minister, came down at the VIP gate at about 5.10 p.m accompanied by security personnel and some other persons. Some of the security personnel took position in their respective vehicles. As soon as the CM Punjab got into his car parked in front of VIP gate, a powerful bomb explosion took place as a result of which the car of the C.M Punjab and some other cars caught fire. The CM Punjab and several security personnel and others were killed on the spot or sustained injuries. Constable Pala Ram has further stated that the aforesaid bomb explosion was caused by the terrorists with the object of killing S.Beant Singh and security personnel etc. Pala Ram has further stated that he was also injured in the explosion and was sent to P.G.I Chandigarh for treatment.

6. The case was initially investigated by the Police of U.T of Chandigarh. Nanha Ram, SHO P.S North after reaching the spot along with other Police parties, inspected the spot and found that the car in which, Shri Beant Singh, Chief Minister, was sitting, when this explosion took place, was found to be burnt and badly damaged and the dead

body of Sardar Beant Singh was found in a badly charred condition at the back seat of the Car No. PB-08-3469 and the remaining cars were also damaged. He also found that an Ambassador car bearing registration No. DBA-9598, was found to be parked at some distance from the place of occurrence towards the side of Haryana Secretariat and was lying abandoned. In the meanwhile police photographs and Dr.Mishra of Forensic Science Laboratory, Punjab also reached at the spot and took the photographs of the scene of crime as it exists at the spot.

7. All the injured lying at the spot were removed to the various hospitals whereas dead bodies were sent to various hospital for postmortem examination. Nanha Ram also took into possession two dismembered legs and one sundered head of an unidentified person and the same was also sent to the Hospital for examination.

8. As a result of bomb explosion it was found that following 17 persons were killed:-

1. Sardar Beant Singh (CM) s/o Captain Hazura Singh, r/o H.No.45 Sector-2 Chandigarh (Chief Minister of Punjab)
2. Shri Yashpal Bali s/o Hari Ram Bali r/o H.No.4001, Sector 22 D , Chandigarh (PA to Chief Minister)
3. Shri Kultar Singh, s/o Shakti Chand,r/o

Village Jagroop Distt. Kangra (HP), (R-1,NSG).

4. Shri Laxman Das, s/o Ram Lal, No.36/202, PAP r/o Mohalla Khokhaonwala, Badi Market, near Arya Samaj , Sanaur Distt. Patiala.
5. Shri Jagdish Singh Kutana, ASI/PP s/o Teja Singh, R/o Village Kutana Sahib, Distt. Ludhiana.
6. Swaran Singh, s/o Hazura Singh r/o 3107, Sector 40-D Chandigarh (PA to Chief Minister)
7. Shri Rajinder Parsad , s/o Lachman Lal r/o Village Barbali, Distt. Jkhalwarh (Raj) (SI- NSG)
8. Shri Balbir Singh s/o Jagna Ram r/o Village Pipli Distt. Jhunjhunu (Raj) (RI-NSG).
9. Dr.Anil Kumar Duggal, S/o K.K.Duggal, r/o H.No.3313, Sector 32 D chandigarh.
10. Shri Tota Ram Sharma, s/o Chetram Shafrma r/o 210-A, Chandigarh Village Chenari, PO Alra, Simla (Peon in the Secretariat).
11. Shri Ajaib Singh , HC No.1/147, HAP s/o Gurmej Singh V& PO Sarawana, Distt . Yamuna Nagar, Haryana.
12. Shri Jagdish Singh s/o Dayal Singh r/o Village Bhallan, PS Chamkaur Sahib, Ropar (Driver of Chief Minister)
13. Shri Mukhtiar Singh , ASI Punjab Police s/o Late Bhag Singh r/o Village Mahraj, PS Phool Distt.
14. Chamkaur Singh s/o Jagdev Singh r/o Village Gajjan Majra, Distt. Sangrur.

(ASI Punjab Police)

15. Ranjodh Singh Mann S/o Nihal Singh, r/o Village Majri, P.S. Payal, Distt Ludhiana.
16. Dhanwant Singh s/o Inderjit Singh, Village Pandon, Distt. Ropar.
17. Baldev Singh s/o Harnek Singh r/o H.No.1223, Gali No.12, Gurunanak Nagar, Patiala assassin was also killed in the blast.

9. Similarly, it was also found that the following persons sustained injuries in this explosion:-

1. Manojit Pal Singh s/o Lachhmanpal.
2. Bakshish Singh s/o Sardar Singh Constable No.75/1027PAP R/O H.No.564 Sector 6, Chandigarh.
3. Kulwant Singh s/o Gurmail Singh.
4. Kesar Dumra s/o Telu Ram.
5. SI Amar Singh s/o Tiku Ram CRPF.
6. Virender Rana s/o Kewal Singh.
7. HC Manmohan Singh No.80/75 PAP.
8. D.K.Tripathi SP CM Security.
9. Satinder Kumar, driver.
10. Mahabir Prasad.
11. Upkar Singh.
12. Constable Pala Ram No.1/675 HAP.

13. Driver Joginder Singh.

14. Constable Dhurba Das No.941241661 B.Coy.

15. Pushpinder Kumar S/O Raj Kumar.

10. As stated earlier, the further investigations thereafter were held by Central Bureau of Investigation (C.B.I) and as a result of the investigations and the evidence collected by the C.B.I, it was found that a conspiracy to assassinate Sardar Beant Singh, was initially hatched in Pakistan by Wadhawa Singh and Mehal Singh of Babbar Khalsa International and the other persons namely Manjinder Singh based in U.K., Harjit Singh based in U.S.A, Resham Singh based in Germany along with the present accused persons and Dilawar Singh assassin and all of them had played active part in the enforcement and in the execution of the aforesaid conspiracy leading to the killing of Sardar Beant Singh.

11. As per the prosecution, the investigation revealed that S.Beant Singh, who was the Chief Minister of Punjab since February, 1992 was assassinated pursuant to the deep rooted criminal conspiracy, masterminded by Babbar Khalsa International, a terrorist organization. The organization was founded in the year 1978 by Fauja Singh, then Head of Akhand Kirtani Jatha. One of the Principal objectives of this organization is to

create a sovereign Sikh State called Khalistan out of the territory of India. Wadhwa Singh is the Chief of this terrorists organization since last few years and Mehal Singh is one of his important lieutenants. This terrorists organization plans to achieve the aforesaid objective through violent means against the lawfully established authority. It has claimed responsibility for the targeted killing of several important public functionaries both of the govt of India and that of the Govt of Punjab, in last few years for achieving their objective. Babbar Khalsa International has categorically claimed the responsibility for the assassination of S.Beant Singh in various communications sent to the news paper agencies.

12. According to the perception of this terrorist organization, S.Beant Singh usurped the power after 1992 elections in the State of Punjab despite the boycott of these elections by several political groups. This terrorists organization holds S.Beant Singh responsible for the indiscriminate atrocities against innocent Sikhs in the Punjab and countryside as also for the illegal arrests, tortures, during investigation and elimination of the detenees in fake encounters. Babbar Khalsa International has also claimed that S.Beant Singh was enemy No.1 of Sikh 'Qaum' and deserved the death penalty. It has also threatened that anyone working against the Sikh 'Qaum' would

meet the same fate as S.Beant Singh. It has also threatened to cause assassination of top level national leaders and functionaries of the State of Punjab to pave way for the creation of 'Khalistan'.

13. Accused Wadhwa Singh son of Amar Singh, R/o Village Sandhu Chattha, PS Sadar, Kapurthala, Punjab and Mehal Singh S/o Jind Singh R/o Village Dasuwal, P.S Valtoha Distt. Amritsar (Pb) are both citizens of India. Both of them have a base in Pakistan and are indulging in anti India activities from Pakistan. They have also been clandestinely visiting India to carry out the terrorists activities in India and destabilise the lawfully established authority. Accused Jagtar Singh Hawara s/o Sher Singh, is resident of Village, Hawara Kalan, P.S Khamano, Distt. Fatehgarh Sahib, Punjab. He is a hard-core terrorist of Babbar Khalsa International and has been assisting Wadhwa Singh and Mehal Singh in the execution of their violent activities and diabolical plans. He has been visiting Pakistan clandestinely and inducting young boys from India to Pakistan for training in arms, ammunitions and explosives to carry out violent activities in India.

14. Accused Balwant Singh s/o Malkiat Singh R/o Village, Rajoana Kalan, PS Sudhar, Distt., Ludhiana, who was residing at that time in H.No.68-A, Rattan Nagar, Patiala, was a Constable

of Punjab Police since 01.10.1987. He remained posted as a security guard to Sh.Bhushan Sirhindi, a journalist of Patiala. Accused Gurmeet Singh S/o Jaswinder Singh is R/o H.No.1431, Gali No.14, Guru Nanak Nagar, Patiala. He was working as service engineer in BPL Sanyo at Chandigarh and was sharing a rented accommodation with his friend Satinder Pal Singh alias Simpi r/o Patiala at H.No.981, Phase 4, Mohali, Distt. Ropar.

15. Accused, Lakhwinder Singh S/o Darshab Singh, is originally R/o H.No.156, Gali No.9, Guru Nanak Nagar, Patiala. He is a constable, No.409, in the Punjab Police since 7.6.1993. At the time of his arrest in this case, he was working as a constable driver in the Intelligence Branch of Punjab Police and was sharing a rented accommodation in Village Kansal Distt. Ropar with Constable Gurbachan Singh.

16. Accused, Dilawar Singh S/o Harnek Singh was resident of H.No.1223, Gali No.12 Guru Nanak Nagar, Patiala. He worked as a Special Police Officer in Distt. Fatehgarh Sahib from 9.6.1993 to 18.9.1994. Thereafter, he was dismissed.

17. Accused Gurmeet Singh, Dilawar Singh, Lakhwinder Singh and Balwant Singh were good friends. Accused Paramjeet Singh, Jagtar Singh Tara (PO), Jagroop Singh and Navjot Singh are active

members of Akhand Kirtani Jatha and used to meet each other frequently in Samagams held at various places in India preceding the assassination of S.Beant Singh and were intimate to each other.

18. Accused Paramjeet Singh and Jagtar Singh Tara were found to be involved in a criminal case registered vide FIR No.39/91 dated 23.6.1991 P.S Ropar Distt. Ropar U/s 307, 148, 149 IPC r/w 25/54/59 of Arms Act and Section 3 of TADA, 1987 for which they were facing trial along with their other associates.

19. Accused, Nasib Singh is resident of Village Jhingra Kalan, PS Kurali in Ropar Distt. His house was frequently visited by accused Jagtar Singh Hawara since last about two years from the date of occurrence to use it as his hide out and for concealing arms and explosives in his house for carrying out the plans of Babbar Khalsa International. Accused Navjot Singh and Jagroop Singh are neighbours in Mohali township. Accused Gurmeet Singh, Lakhwinder Singh, Dilawar Singh and Balwant Singh had definite leaning towards Babbar Khalsa International.

20. During the period November, 1994 to August, 1995 accused persons namely Wadhwa Singh, Mehal Singh, Paramjeet Singh, Jagtar Singh Hawara, Jagrup Singh, Balwant Singh, Dilawar Singh,

Shamsher Singh, Jagtar Singh Tara, Lakhwinder Singh, Gurmeet Singh, Nasib Singh, Navjot Singh and others unknown entered into a criminal conspiracy at various places in India/Pakistan with the object of committing the assassination of S.Beant Singh, then Chief Minister of Punjab.

21. During investigations, it was found that the following acts of commission and omission were committed by the aforesaid accused persons in pursuance of the said criminal conspiracy:-

(i) Accused Wadhwa Singh, Mehal Singh and Jagtar Singh Hawara some time in November, 1994 at Lahore, agreed to assassinate S.Beant Singh, the Chief Minister of Punjab, as he was an enemy of Sikh Panth and had given free hand to the Punjab Police to kill the Sikhs and, thus was coming in the way of the creation of 'Khalistan'. Accused Jagtar Singh Hawara assured Wadhwa Singh and Mehal Singh that he would definitely organize the killing of S.Beant Singh for which arms and explosives and monetary support was required. Wadhwa Singh and Mehal Singh agreed to provide the same.

(ii) Accused Wadhwa singh, Mehal Singh and Jagtar Singh Hawara decided to

execute the killing of S.Beant Singh by using some one to act as a 'human bomb'.

(iii) Accused Wadhwa Singh and Jagtar Singh Hawara motivated persons, who might be willing to offer themselves for being used as, 'Human Bomb' for the assassination of S.Beant Singh.

(iv) In the month of May/June, 1995, accused Dilawar Singh hired a one room accommodation at a secluded place in Village Ratoli, Tehsil Rajgarh, Distt. Sirmour, HP from one Joginder Singh s/o Santu Ram. Accused Dilawar Singh Balwant Singh, Lakhwinder Singh and other used to meet there.

(v) Accused Jagtar Singh Hawara contacted Shamsheer Singh s/o Surjit Singh R/o Village Ukasi Jattan, Distt Patiala, some time in June, 1995 and joined him in the conspiracy.

(vi) In July, 1995 accused Paramjeet Singh introduced Jagtar Singh Hawara to Jagtar Singh Tara in New Delhi, who was working as a driver of Mohan Raj Shekher R/o B-4/III, Safdarjung Enclave, New Delhi and told him that accused Jagtar

Singh Hawara is a member of Babbar Khalsa International and had returned from Pakistan. Paramjeet Singh requested Jagtar Singh Tara to help Jagtar Singh Hawara in the 'task' for which Jagtar Singh Tara agreed.

(vii) Later on, in the same month i.e July, 1995 Paramjeet Singh, Navjot Singh and Jagtar Singh Hawara met Jagrup Singh at his house in Mohali, Paramjeet Singh told them that S.Beant Singh then CM Punjab and KPS Gill DGP Punjab were to be killed, as they were responsible for the killing of several jathedars in false encounters. Jagtar Singh Hawara assured the availability of arms and explosives for this purpose and all the aforesaid agreed to the said plan.

(viii) Around 10th August, 1995 Jagtar Singh Hawara and Shamsher Singh engaged Truck No. PB12-A-7947 of Sapinder Singh alias Pappu (Shamsher's cousin) from Village Lalroo and in the said Truck they went to a place near Ajnala in Amritsar Distt. close to Indo-Pak border and from there brought two bags full of explosives. The said bags were brought in the said truck to village Ukasi. Shamsher

Singh & Jagtar Singh Hawara concealed these bags in the house of Shamsheer Singh in village Ukasi Jattan, Distt. Patiala.

(ix) Accused Jagtar Singh Hawara, brought a big sack on a Scooter from the house of Shamsheer Singh in village Ukasi Jattan to the house of accused Nasib Singh in village Jhingran Kalan, P.S.Kurali, Distt. Ropar. The said big sack contained two 'kattas' containing explosives and remote control devices etc. Accused Nasib Singh at the behest of Jagtar Singh Hawara concealed the said explosives etc in his house.

(x) Jagtar Singh Hawara and Jagtar Singh Tara purchased a steel grey colour Ambassador Car No.DBA-9598 on 20.8.1995 for Rs.32,000/- from Smt.Reva Dutta, w/o Shri S.K.Dutta, r/o Paschim Vihar, New Delhi, to be used in the commission of the crime. Jagtar Singh Tara had falsely signed the delivery note of the said car as Basant Singh. Jagtar Singh Tara brought car no.DBA-9598 to the house No.B-50, Vishwakarma Park, Laxmi Nagar, Shakarpur, Delhi of Paramjit Singh. Paramjit Singh kept the said car at his house from 20th August to the morning of

24th August, 1995.

(xi) On 23.8.1995, Jagtar Singh Hawara telephonically sent a coded message to Jagtar Singh Tara at the residence of Shri Mohan Raj Shekhar, his employer, to reach Punjabi University, Patiala on the next day with the said car.

(xii) On 24.8.1995, Jagtar Singh Tara along with Paramjeet Singh left Delhi by Car No. DBA-9598 and reached Punjabi University, Patiala, where accused Jagtar Singh Hawara and Balwant Singh met them. They decided that the next meeting would be held in Gurdwara Dukh Nivaran at 7.00 a.m next day i.e 25.8.1995.

(xiii) On 25.8.1995, Paramjeet Singh and Jagtar Singh Tara reached Gurudwara Dukh Nivaran, Patiala, in Car No. DBA-9598, where Jagtar Singh Hawara, Balwant Singh and Dilawar Singh were already present. Thereafter Jagtar Singh Hawara, Paramjeet Singh, Balwant Singh, Jagtar Singh Tara and Dilawar Singh left Patiala in Car No. DBA-9598 and reached Village Jhingra Kalan, P.S. Kurali, Distt. Ropar. They collected two bags containing remote control devices, electric wires and

explosives (RDX) etc from the house of Nasib Singh, where they were earlier kept by Jagtar Singh Hawara.

(xiv) Thereafter, on the same day i.e 25.8.1995, all of them reached H.No.981, Phase 4, Mohali of accused Gurmeet Singh, where Jagtar Singh Hawara, kept some of the explosive materials out of the aforesaid two bags.

(xv) Then, all of them i.e accused Jagtar Singh Hawara, Paramjit Singh, Balwant Singh, Jagtar Singh Tara & Dilawar Singh went to H.No.243, Phase 7, Mohali of Jagrup Singh, where Jagtar Singh Hawara and Paramjeet Singh, kept the remote control devices and the remaining explosive materials.

(xvi) On 26.8.1995, Jagtar Singh Hawara asked Paramjeet Singh to contact Dilawar Singh, (assassin), and get the car No. DBA-9598 painted 'off white' to give it a look of an official car. Gurmeet Singh, Lakhwinder Singh and Dilawar Singh (assassin) and one other, took the car No. DBA-9598, to the shop No.24, Sector 7, Chandigarh of Shri Surendra Sharma and delivered it for painting it 'off white'.

Lakhwinder Singh paid advance of Rs.1500/- and they insisted that the car should be ready by 29.8.1995 or latest by 30.8.1995.

(xvii) On 27th or 28th August, 1995, accused Lakhwinder Singh got the waist of a khaki colour pant loosened by Anil Kumar, tailor, for use by Dilawar Singh.

(xviii) On 28.8.1995 Jagtar Singh Hawara and Balwant Singh, who was in Police uniform, brought one stengun, one pistol, some magazines and cartridges and many sets of Punjab Police uniforms contained in a big black colour bag, in a blue Maruti van and kept the same in the house of Jagrup Singh.

(xix) On 28.8.1995, in the evening, accused Dilawar Singh, Jagtar Singh Hawara, Gurmeet Singh, Balwant Singh and Lakhwinder Singh met in the room of Gurmeet Singh located at house No. 981, Phase IV, Mohali, which Gurmeet was sharing with his friend Satinder Pal Singh @ Simpi and remained there throughout the night.

(xx) During the night of 28.8.1995

Gurmeet Singh, Jagtar Singh Hawara, Balwant Singh, Dilawar Singh and Lakhwinder Singh, while at the aforesaid room of Gurmeet Singh, mixed up RDX with other materials on newspaper for the purpose of making a belt bomb and made a belt-bomb.

(xxi) On 29.8.1995, accused Jagtar Singh Hawara, Jagtar Singh Tara, Jagrup Singh and Paramjit Singh concealed the remote control devices, explosives and wires etc in the cavity of the harmonium brought by Jagrup Singh. The aforesaid materials had been brought by the aforesaid accused persons to the house of Jagrup Singh on 25.8.1995. The said harmonium was kept in the house of Jagrup Singh. Further, the aforesaid accused concealed the remaining firearms and explosives in two tubes and a plastic cover. Thereafter Navjot Singh took the above material to his house at H.No.889, Phase 3-B-2 along with Jagtar Singh Hawara and Jagtar Singh Tara and concealed it there.

(xxii) In the evening of 29.8.1995 accused Dilawar and Balwant Singh went to the shop of Surinder Sharma on the scooter of Lakhwinder Singh and they

asked for the Car. But the car was not ready at that time. Surinder Sharma told them that the car would be delivered on the next day i.e 30.8.1995.

(xxiii) In the forenoon of 30.8.1995n accused Dilawar Singh and Balwant Singh again went to the shop of Surender Sharma on Scooter No. PCP 2085 belonging to accused Lakhwinder Singh for taking delivery of the car DBA-9598, Since the car was not yet ready, both of them waited there. Later, in the afternoon when the painting work was about to be complete, Balwant Singh left on the scooter and came back to the shop after sometime with Dalbir Singh @ Maula after collecting the Khaki pant from Lakhwinder Singh. The pant was taken out of the dickey of the scooter and handed over to Dilawar Singh. The Scooter was given to Maula. Dilawar Singh and Balwant Singh took delivery of the car and made the balance payment of Rs.1500/-.

(xxiv) After taking delivery of the car on 30.8.1.995 Jagtar Singh Tara, Dilawar Singh, Jagtar Singh Hawara and Balwant Singh left for the Punjab & Haryana Civil Secretariat, Chandigarh, by the car No.

DBA-9598, at about 4/4.30 p.m, Jagtar Singh Tara was driving the Car. Dilawar Singh was wearing police uniform. Accused Jagtar Singh Hawara got down from car on the way. The remaining three accused reached the Secretariat and found that S.Beant Singh had already left the Secretariat. They returned back to Mohali and while coming back, accused Dilawar unstrapped the belt bomb from his waist.

(xxv) On the night of 30.8.1995, Dilawar Singh and Balwant Singh took the car No. DBA-9598 to the house No.3031/1, Sector 45, Chandigarh and stayed there for the night with Chamkaur Singh brother of Dilawar Singh.

(xxvi) Before leaving the house in the morning of 31.8.1995, Dilawar Singh cautioned his brother Chamkaur Singh to leave Chandigarh immediately as he was going to do something big for which police would torture and kill him.

(xxvii) In the morning of 31.8.1995, accused Dilawar Singh and Balwant Singh left the house of Chamkaur Singh in Car No. DBA-9598 and while they were leaving the house, Lakhwinder Singh

and Gurmeet Singh also joined them.

(xxviii) Thereafter, Jagtar Singh Tara and Balwant Singh went to the Secretariat on a Scooter. Lakhwinder Singh met them there and told them that S.Beant Singh had not yet reached the Secretariat. After that Balwant Singh and Jagtar Singh Tara went to the bungalow of S.Beant Singh to ascertain his whereabouts and learnt that the Chief Minister was present in his bungalow.

(xxix) At about 12 noon, Jagtar Singh Tara and Balwant Singh again went to the Secretariat from where they went to Village Kansal to enquire about Lakhwinder Singh. They could not meet Lakhwinder Singh there. Then both of them again came back to the Secretariat. After some time Lakhwinder Singh also joined Balwant Singh and Jagtar Singh Tara at the Secretariat premises. Jagtar Singh Tara and Balwant Singh stayed in the Secretariat premises area and waited for the arrival of S.Beant Singh.

(xxx) At about 1.30 p.m s.Beant Singh, Chief Minister Punjab, reached the Secretariat, Jagtar Singh Tara and

Balwant Singh immediately left the Secretariat on the Scooter for House No.981, Phase-4, Mohali of Gurmeet Singh. On way to the house of Gurmeet Singh, they collected Car No. DBA-9598 from their hideout and one of them drove the said car to the aforesaid house of Gurmeet Singh. After reaching the house of Gurmeet Singh, Jagtar Singh Tara and Balwant Singh informed Dilawar Singh (assassin) and Gurmeet Singh that S.Beant Singh had reached Secretariat. Balwant Singh asked Dilawar Singh to get ready for the task. Dilawar Singh strapped the bomb-belt around his waist. Gurmeet Singh checked up the electric connections of the belt-bomb to ensure that they were in working order. Dilawar Singh (assassin) dressed up in police uniform concealing the belt-bomb underneath it.

(xxxi) Jagtar Singh Tara and Dilawar Singh left the house of Gurmeet Singh for the Secretariat in Car No. DBA-9598 for the 'task' Accused Balwant Singh followed them on his Scooter No.PB-11-1955. Jagtar Singh Tara was driving the car and Dilawar Singh had occupied the front seat. They reached the Secretariat at about 3.00 P.M and parked the car at a

short distance from the VIP gate. Balwant Singh also joined accused Dilawar Singh and Jagtar Singh Tara in the Car. After some time, Jagtar Singh Tara left the Secretariat leaving behind Dilawar Singh and Balwant Singh in the Car.

(xxxii) Accused Dilawar Singh and Balwant Singh were in the car awaiting the departure of S.Beant Singh from Punjab Secretariat. They had waited as per the plan for assassinating the Chief Minister, Punjab at the VIP gate of the Secretariat.

(xxxiii) Accused Lakhwinder Singh was also present in the close vicinity of Punjab and Haryana Civil Secretariat around 5.00p.m on 31.8.1995.

(xxxiv) At about 5.10 p.m, S.Beant Singh came down to the VIP gate surrounded by his security personnel and others and when he got into car No. PB-08-3469, accused Dilawar Singh was seen approaching the Chief Minister's car and immediately there was a huge explosion in which the CM's Car and some other cars in the motorcade caught fire and entire area was engulfed in a dark of dense smoke.

S.Beant Singh and seventeen other persons named above died as a result of explosion and 15 persons named above were injured.

22. Similarly the investigation further revealed that during the investigations two dismembered legs and one damaged head of unidentified person was examined by Dr.Inderjit Diwan of P.G.I, who opined that both the legs belong to the same individual and they have been severed just above the knees by a blast, which has created a big lacerated wound at the upper ends of both the legs because of an explosive device and he also advised a D.N.A test to confirm the identity of the persons. Similarly, the swabs taken from the dismembered legs and heads were sent to CFSL, Chandigarh and they have confirmed the presence of RDX on the above dismembered parts of the unidentified persons. During the investigations, Harnek Singh, father of the assassin Dilawar Singh, identified the legs and head in question being of his son Dilawar Singh. Dr. Lalji Singh of Central for Cellular and Molecular Biology Hyderabad, took the blood samples of Harnek Singh, Smt. Harjit Kaur and Chamkaur Singh, father, mother and brother respectively of Dilawar Singh and also the samples from the dismembered legs and head found at the place of occurrence and after conducting the DNA profile and examination concluded that both the

legs and head belongs to the one and the same individual and that the said individual is biological off-spring of Smt.Surjit Kaur and Shri Harnek Singh and since Shri Dilawar Singh is the only missing son of Smt.Harjit Kaur and Shri Harjit Singh, the remnant is that of assassin Dilawar Singh. In this way the identity of assassin has been firmly established as being Dilawar Singh s/o Harnek Singh, resident of Patiala.

23. Similarly, as per the spot inspection by the experts and specially by Lt.Col. Manik Sabharwal, an expert of Explosive cases, the explosion took place at a distance of about 1 to 2 meters from the left rear door of the car No. PB-08-3469 in which Shri Beant Singh, then CM was sitting and that the seat of the explosion was above the ground level and it has been caused by a explosive device strapped on the torso of a suicide bomber or a human bomb and that is why after the explosion the swearing of his head and legs and total extermination of the torso has taken place.

24. The sequence of events accusing the accused persons being part and parcel of the conspiracy leading to the murder of Beant Singh, after the commission of the crime till their arrest and the act and conduct of the accused persons after the commission of the crime till their arrest reveals that on 10.9.1995 , Scooter No. PB-11-1955

of Balwant Singh was recovered from Pritam Cycle Stand, Patiala. From the dicky of the Scooter, an unused belt made of cloth meant for making the belt-bomb was also recovered. Accused, Balwant Singh has been absconding ever since the assassination of Sardar Beant Singh.

25. Accused Lakhwinder Singh met Dalbir Singh @ Maula on 2.9.1995 in Village Kansal and told him that the planning of the bomb blast was made by him, Balwant Singh, Gurmeet Singh and Jagtar Singh Hawara, wherein Dilawar Singh attained martyrdom. Lakhwinder Singh had also confided in Dalbir @ Maula that Ambassador Car No. DBA-9598, regarding which the news had appeared in the newspaper, was the same which was got painted from Shri Surender Sharma, painter and delivered to Dilawar Singh and Balwant Singh.

26. Accused Jagtar Singh Tara reached Delhi and told Jaswinder Singh and Baldev Singh that the car used in S.Beant Singh assassination, was purchased by him and his friend from Paschim Vihar, Delhi. He also told them that he and his friend Paramjit Singh had reached Chandigarh via Punjab on 25.8.1995. He further confided in them that he had driven accused Dilawar Singh in the ambassador car on 31.8.1995 to the Punjab & Haryana Secretariat, when Dilawar Singh was in police uniform and equipped with a belt bomb. He also told his

brothers that Dilawar Singh had killed S.Beant Singh by causing the bomb explosion.

27. Accused Jagtar Singh Tara has made a confessional statement before Special Judicial Magistrate, Punjab, Patiala on 22.9.1995 in which he has admitted his own involvement in the assassination and also the involvement of other accused, namely Jagtar Singh Hawara, Paramjit Singh, Balwant Singh, Dilawar Singh, Gurmeet Singh, Lakhwinder Singh, Navjot Singh and Jagrup Singh. He has given vivid details of various overt acts done by the aforesaid accused persons pursuant to the criminal conspiracy to kill S.Beant Singh, consequent to which Dilawar Singh acted as human bomb on 31.8.1995.

28. During the course of investigation, accused Lakhwinder Singh and Gurmeet Singh were arrested at Chandigarh on 5.9.1995. Accused Jagtar Singh Tara was arrested in Delhi on 13.9.1995. A cyanide capsule was also recovered from his possession at the time of arrest. Accused Navjot Singh was arrested on 18.9.1995 at Village Jhingra Kalan. The Scooter No. PCP-2085 of Lakhwinder Singh, which he was driving at the time of his arrest, was also seized.

29. Accused Gurmeet Singh was taken on Police custody remand from 6.9.1995 to 19.9.1995. While in

custody, he made a disclosure statement on 8.9.1995 u/s 27 of the Indian Evidence Act to the effect that S.Beant Singh was killed by Dilawar Singh by using a belt-bomb, which was prepared in his room. On the pointing out of Gurmeet Singh, newspaper pieces on which the RDX etc was mixed, polythene bag, cardboard strip and cardboard boxes containing the traces of RDX and the particles of the explosive materials found on the floor of his room were taken into possession.

30. Accused Jagtar Singh Tara made a disclosure statement on 18.9.1995 to the effect that he along with Jagtar Singh Hawara, Dilawar Singh, Balwant Singh and Paramjit Singh had gone to village Jhingran Kalan on 25.8.1995 from where Jagtar Singh Hawara had collected explosives and the remaining explosives were still lying in the said house. He promised to point out that house in the village Jhingra Kalan, where explosives are still concealed. Consequently, Jagtar Singh Tara was taken to that village, who pointed out the house of Nasib Singh.

31. Nasib Singh was arrested on 18.9.1995 and while in police custody he made a disclosure statement that the explosives, which Jagtar Singh Hawara had concealed in his house and out of which some explosives, he (Hawara) had taken away on 25.8.1995, was lying concealed in a room underneath

a heap of straw which he could point out and get recovered. On the pointing of Nasib Singh, RDX weighing about 13.700 kgs was recovered on 18.9.1995 from Nasib Singh's house.

32. During investigation, Scooter No. DL-5SF-0318 in the name of Jagtar Singh Tara s/o Sadhu Singh was seized from Kamaljit Singh @ Kala on 22.10.1995. The aforesaid Scooter had been financed by accused Paramjit Singh.

33. Accused Lakhwinder Singh was arrested on 5.9.1995, while he was traveling on a scooter NO. PCP 2085, in Chandigarh. On his personal search along with other articles, a torn receipt memo No.13414 was recovered. On the back of it was written "I want death only, first CM Punjab you know, then PM". The writing is in the hand of accused Lakhwinder Singh. The house search of accused Lakhwinder Singh at Village Kansal also revealed bank deposits of Rs.3.85 lacs with Bank of Punjab Ltd., Chandigarh.

34. House search of accused Navjot Singh was conducted on 17.9.1995 during which his personal diary and some loose sheets were recovered. Accused Navjot Singh has recorded in his own hand "water will not flow in SYL Canal. Only blood of Beant Singh (Singh struck off) and KPS along with their corrupt colleagues will flow in SYL canal along

with blood of Bhajan Lal" Apart from the above, a manuscript in the hand writing of Navjot Singh was also recovered from his house which, inter alia, states that "The People of India and the Govt. of India i.e the Govt. of thieves and black marketeers should not rejoice that peace has come to Punjab through their puppet Govt. i.e Beant Singh the 'smuggler' who along with killer DGP i.e Gill is killing the Sikh youths in fake encounters and looting the people of Punjab through black cats. These same very cats were mixed in militant ranks to defame the Sikh struggle and to eliminate Jathedars which they did successfully but this will not happed now".

35. Accused Jagtar Singh Tara had parked Ambassador Car No. DBA-9598 near the VIP gate of the Secretariat on 31.8.1995. During the search of the Car, a couplet in Punjabi in the hand writing of Balwant Singh was recovered, which when translated into English says that **"my comrades died n the hope that I share their griefs;but if I keep quite and do not say anything then their Souls would not rest in peace and would constantly haunt me."**

36. From the aforesaid car, Chance Finger prints were lifted by the experts of CFSL, New Delhi. Vide their Report No. CFSL-95/A/847-44-1 dated 30.10.1995, the CFSL has opined that a

chance print developed and photographed from the rear view mirror of the car is of accused Lakhwinder Singh.

37. Search was also conducted in the house of Balwant Singh in Patiala, on 5.9.1995 in which a diary and Babbar Khalsa International letter heads were recovered. In the last page, there is a pen sketch which purports to be of the Punjab & Haryana Secretariat along with the sketch of a commando looking person.

38. House No.1223, Gali No.12, Gurunanak Nagar, Patiala of Dilawar Singh, was searched on 5.9.1995 in which a small booklet on Shaheed Bhagat Singh was recovered. In one side of the last title page, a pen sketch is drawn which purports to be a belt-bomb with detonator device.

39. Similarly, some more facts, which fortifies the commission of the offence by the accused persons found during the investigations, were that after the blast on 31.8.1995, office of the UNI, New Delhi, received a fax message on the same night issued and signed by accused Wadhwa Singh and Mehal Singh on the letter head of Babbar Khalsa International. The fax message conveyed that Babbar Khalsa International owned the responsibility for killing S.Beant Singh. Another fax message was received in the same Office on

6.9.1995 under the signatures and name of accused Mehal Singh, also bearing the name of accused Wadhwa Singh. It is also on a similar letter head of Babbar Khalsa International and spells out the jurisdiction and rationale of Babbar Khalsa International behind the killing of S.Beant Singh.

40. On 2.9.1995, a fax message was received in the office of Hind Samachar Group, Jalandhar on a similar letter head of Babbar Khalsa International signed by Wadhwa Singh, wherein he has claimed the responsibility for the killing S.Beant Singh and given a call to the people of Punjab to fight against the Govt. of India for the cause of 'Khalistan'.

41. Another fax message was received in the office of Hind Samachar Group, Jalandhar on 7.9.1995 on the letter head of Babbar Khalsa International signed by Wadhwa Singh, wherein it is reiterated that the organisation is behind the killing of S.Beant Singh. The signatures on the aforesaid fax message have been proved to be of Wadhwa Singh and Mehal Singh by the Independent witnesses.

42. All the incriminating articles collected from the scene of crime including cloth pieces taken into possession from the car of Sardar Beant Singh, some partly burnt pieces of clothes lying here and there debris, metallic nails, wooden

pieces, human jaw, dori, rubber pipe, keys, space, watch etc. were sent to CFSL Chandigarh for technical examination and after the various technical tests RDX was detected on various cloth pieces, fleshy material, debris, burnt pieces of sponge, human jaw, metallic frame, clothes taken from the rear seat of the car of Sardar Beant Singh, etc. Similarly traces of another explosive known as PETN were also detected on the swabs taken from the heads and legs of the assassin.

43. The articles purporting to contain traces of RDX recovered from the house of Gurmeet Singh on 8.9.1995 were also sent to CFSL, Chandigarh for examination. CFSL, Chandigarh, vide its report No.989/95 dated 27.9.1995 opined that RDX was detected on the polythene bag, brown coloured cardboard boxes, cardboard strips, pieces of newspaper and particles purported to have been lifted from the floor of the room of Gurmeet Singh.

44. On completion of investigation, accused Wadhawa Singh, Mehal Singh, Jagtar Singh Hawara, Paramjit Singh, Balwant Singh, Jagroop Singh and Shamsheer Singh have been found absconding since the aforesaid occurrence and as such after obtaining the necessary sanction as required u/s 188 of the Cr.P.C against absconding accused Wadhawa Singh, Mehal Singh and sanction for prosecution under the provisions of Explosives Act, a charge sheet no.6

of 1995 was filed against the accused Gurmeet Singh @ Mita, Lakhwinder Singh @ Lakha, Jagtar Singh @ Tara (now P.O) Navjot Singh and Nasib Singh. Vide order dated 11.12.1995 Shri Shekhar Dhawan then Chief Judicial Magistrate committed the charge sheet to the court of Sessions.

45. During the pendency of the proceedings before the Sessions Judge, Chandigarh it was found that the accused Shamsher Singh has been arrested and accordingly a supplementary challan no.6-A of 1995 was filed against accused Shamsher Singh inter-alia alleging that being part and parcel of the conspiracy, the accused Shamsher Singh, at the behest of accused Jagtar Singh Hawara, arranged Truck No. PB-12-A-7947 belonging to his cousin Sapinder Singh. Thereafter, both of them on or about 10.8.1995 used that Truck and brought two bags of RDX from a place near Village Ajnala, Distt Amritsar near the Indo Pak border, in pursuance of their conspiracy to execute their target and the same was kept concealed in the house of accused Shamsher Singh in Village Ukasi Jattan, Distt Patiala.

46. Later on accused Jagtar Singh Hawara removed some part of the RDX from the consignment possessed by accused Shamsher Singh on a Scooter on or about 11.8.1995 for using in the commission of murder of Sardar Beant Singh. Accordingly Shamsher

Singh was arrested in this case on 11.12.1995 and was taken to Delhi for investigation.

47. During the investigations accused Shamsher Singh desired to make a confession regarding his guilt and he was accordingly produced in the court of Shri D.K.Sharma, then Metropolitan Magistrate, New Delhi on 16.12.1995, who after satisfying himself, recorded the confessional statement of accused Shamsher Singh in which he has accepted his involvement as well as the involvement of other accused persons and also confirmed use and providing of the Truck of Sapinder Singh for transporting RDX etc from a place near Ajnala along with accused Jagtar Singh Hawara and also confirmed that RDX was stored and kept in his house in Village Ukasi Jattan, P.S. Rajpura Sadar.

48. On completion of necessary investigations and after obtaining the necessary sanction for prosecution, a charge sheet No.6-A of 1995 was filed in the court of C.J.M Chandigarh, and vide order dated 19.12.1995 the same was committed to the court of Sessions.

49. During the pendency of the proceedings before the Sessions Court Chandigarh absconding accused Jagtar Singh Hawara and Balwant Singh were also arrested by the Punjab Police on 22.12.1995. Later accused Balwant Singh was taken into custody

by Haryana Police in its case vide FIR No.88/95, P.S.Naggal, Distt Ambala and he was produced before the court on 14.1.1996 and at that time he was arrested by the CBI in this case and was remanded to Police custody till 27.1.1996. Similarly, accused Jagtar Singh Hawara was arrested by the Haryana Police in the aforesaid case and was produced before the Magistrate at Ambala on 20.1.1996 from where he was arrested by the CBI in this case and then both of them were taken to Delhi for investigations.

50. During investigations, accused Balwant Singh volunteered to make confession and he was accordingly produced before ACMM Patiala House courts, New Delhi on 22.1.1996 and his confession was recorded by Shri V.K.Maheshwari, then Metropolitan Magistrate, Patiala house Court, New Delhi on 23.1.1996. In his confessional statement accused Balwant Singh disclosed all the details as to how he and his other co-accused person hatched a conspiracy and killed Sardar Beant Singh and others on 31.8.1995, through a bomb blast by a human bomb Dilawar Singh.

51. Similarly, accused Jagtar Singh Hawara also suffered a disclosure statement on 23.1.1996 before the Investigating Officer and disclosed that he had prepared the sketch map of the Civil Secretariat of Punjab & Haryana and that of the

belt, used by assassin Dilawar Singh and has kept concealed these documents in the house of Kuldeep Singh @ Ram Singh, Resident of H.No.A-341, Nand Gram Gaziabad, where he stayed before the assassination of Sardar Beant Singh and accordingly after breaking open the lock of above house as per the identity disclosed by accused Jagtar Singh Hawara, the sketch map of Civil Secretariat and of the belt were recovered from the aforesaid premises. Similarly, accused Jagtar Singh Hawara further disclosed that while staying in the house of Kuldeep Singh @ Ram Singh, he frequently made telephonic calls to Resham Singh of Babbar Khalsa International at Germany regarding the assassination of Sardar Beant Singh and he accordingly identified and pointed out the STD/ISD PCO Booths at Gaziabad belonging to Rajesh Kumar Malhotra & Garg Communications.

52. Accordingly after investigating the matter the C.B.I found that accused Jagtar Singh Hawara and Balwant Singh in pursuance of their criminal conspiracy committed the following acts of omissions and commissions in addition to the circumstances mentioned above in para number 21:-

- (i) In June, 1995 accused Jagtar Singh Hawara came to India from Pakistan and stayed with Kuldeep Singh @ Ram Singh in H.No.341-A, Nandgram,

colony, Ghaziabad (UP). While staying there he visited Patiala several times and met accused Balwant Singh and Dilawar Singh at accused Balwant Singh's house.

(ii) On 23.6.1995 Manjinder Singh @ Babaji booked Room No.203 in Surya Guest House, Darya Ganj, Delhi, where he, accused Balwant Singh and Jagtar Singh Hawara assembled and discussed the security arrangement of S.Beant Singh and also the modalities to assassinate S.beant Singh.

(iii) In the first week of July, 1995 accused Jagtar Singh Hawara held a meeting with accused Balwant Singh at latter's residence i.e H.No.68/A Rattan Nagar, Patiala and discussed the security arrangements for S.Beant Singh. They finalised the plan to kill s.Beant Singh through a 'human bomb' in the Punjab & Haryana Civil Secretariat for which they decided to get stitched a cloth belt to be stuffed with explosives etc which was to be strapped by the assassin. They also decided to

procure an Ambassador Car to facilitate the entry of the assassin into the Sectt. Jagtar Singh Hawara took up the responsibility of arranging the explosives etc. and car. Few more uniforms were also got stitched as suggested by Jagtar Singh Hawara.

(iv)As mentioned above, Jaaagtar Singh Hawara, after precuring RDX etc with the help of accused Shamsheer Singh, and storing them in Nasib Singh's house at Jhingra kalan and purchasing the car, DBA-9598 and leaving it with Paramjit Singh and Jagtar Singh Tara in Delhi, went to Patiala again on 21st August, 1995 and met Balwant Singh. On 22.8.1995 Jagtar Singh Hawara and Balwant Singh brought some explosive material to Balwant Singh's house in Patiala.

(v)Jagtar Singh Hawara and Balwant Singh got stitched two cloth belts for the purpose of making a belt bomb, from Stitch Co-Jeans, A/C Market, Patiala. Delivery of one belt was taken on 25.8.1995 evening

and that of the second one on 27.8.1995 evening. One of these belts was used by assassin Dilawar Singh on 31.8.1995 for assassinating S.Beant Singh. The second one was recovered during investigation from the dicky of Balwant Singh's Scooter No.PB-11-1955 which he had left in the Scooter parking of Patiala Bus Stand on the evening of 31.8.1995 after assassination of S.Beant Singh. Accused Balwant Singh while being in police custody made a disclosure statement regarding the belt being stitched from Patiala and consequent to the said disclosure statement, he pointed out the shop of M/s Stitch Co-Jeans, Air Conditioned Market, Patiala, from where the said belts were got stitched. The accused Balwant Singh also made a disclosure statement that in the month of July, 1995 he got various police uniforms stitched for himself and Dilawar Singh and he also pointed out the shop, Sidhu Tailors, Tripuri Town, Patiala, from where the said uniforms were got stitched.

(vi) On 28.8.1995, Jagtar Singh Hawara and Balwant Singh hired a Maruti Van Taxi No. DAJ 1401 from Patiala and took along Service Stengun of Balwant Singh, two magazines of the same gun, the belt with explosive material and police uniforms etc in the Van and went to Mohali where they met Dilawar Singh and Jagtar Singh @ Tara as preplanned.

(vii) On 28.8.1995 Balwant Singh, Dilawar Singh, Jagtar Singh Hawara, Gurmeet Singh and Lakhwinder Singh remade the belt bomb by adding some more explosive material and RDX and nuts/bolts into the cloth belt in the house of accused Gurmeet Singh at house NO.981, Phase.IV, SAS Nagar, Mohali during night hours. It was agreed that accused Dilawar Singh will wear the belt containing the explosives etc and will act as human bomb to kill Beant Singh. And on 30-08-95, all of them made a unsuccessful attempt to kill Beant Singh and ultimately on 31-08-95 they hit their target as per the details given in para 21.

(viii) Immediately after the aforesaid incident, accused Balwant Singh escaped to Patiala on Scooter No. PB-11-1995 and left the same at Pritam Cycle Stand, Patiala and met his foster parents in village Mehraj Patti before whom he made a confession. After visiting village Mehraj Patti & Ludhiana, Balwant Singh absconded and reached Nagpur on 2.9.1995 and met his friend Tejinder Singh. There in presence of Tejinder Singh, Gurpreet Singh, Gurinder Singh and Amandeep Singh, he confessed that he killed S.Beant Singh on 31.8.1995 along with Jagtar Singh Hawara, Jagtar Singh Tara, Lakhwinder Singh, Gurmeet Singh and Dilawar Singh and others. Accused Balwant Singh stayed in Nagpur from 3.9.1995 to 6.9.1995 at Hotels Anand Mahal and President in assumed/ fictitious name of Sandeep Sharma. Later he stayed at Nanded and Panipat.

(ix) Accused Jagtar Singh Hawara absconded and in order to evade his arrest stayed at H.No.A/341, Nandgram, Ghaziabad (UP).

(x) Accused Balwant Singh and Jagtar Singh Hawara absconded after the commission of offence and had been evading arrest. Around 15.9.1995, Balwant Singh joined Jagtar Singh Hawara in Jaipur. He and Jagtar Singh Hawara along with some other persons stayed at different places in Jaipur, Calcutta, Farrukhabad, Agra, Ambala and Ludhiana till 22.12.1995 under fictitious names concealing their identities.

(xi) Accused Jagtar Singh Hawara and Balwant Singh maintained regular telephonic contact with members of their outfit i.e Babbar Khalsa International for seeking instructions and material & monetary support from other countries viz, Germany, USA, Norway etc.

(xii) The chance prints lifted from Car No. DBA-9598 used in the commission of the crime, were got compared with the specimen finger prints of the accused persons and one of the chance prints has been found to be that of accused Balwant Singh.

53. Accordingly after completion of investigations and after obtaining the necessary sanctions, a supplementary charge sheet no.6-B was submitted against accused Balwant Singh and Jagtar Singh Hawara, in the court of Area Magistrate and vide order, dated 19.2.1996, Shri Shekhar Dhawan, then Chief Judicial Magistrate, Chandigarh committed the case qua these accused persons to the court of Sessions.

CHARGE SHEET

54. After commitment of all the three charge sheets, then learned Sessions Judge heard arguments on the question of charge and vide detailed order dated, 30.4.1996, found that there are sufficient grounds for presuming that accused Gurmeet Singh, Lakhwinder Singh, Jagtar Singh Tara, Navjot Singh, Nasib Singh, Shamsher Singh, Balwant Singh and Jagtar Singh Hawara alongwith accused Mehal Singhand Wadhawa Singh (based in Pakistan), accused Manjnder Singh (based in U.K), Harjit Singh (based in U.S.A), accused Rasham Singh (based in Germany), accused Paramjit Singh and accused Jagroop Singh (since absconding) and Dilawar Singh (since dead) have committed offences punishable under Section 120-B read with Section 302 of the Indian Penal Code and 4/5 of the Explosives Substances Act and

that they have also committed offences punishable under Section 4 and 6 of the Explosive Substances Act; Lakhwinder Singh and Balwant Singh accused have committed an offence punishable under Section 114 read with Section 302 of the Indian Penal Code and all the above named accused have also committed an offence punishable under Section 114 read with Section 307 of the Indian Penal Code; and accused Gurmeet Singh, Jagtar Singh Tara, Navjot Singh, Nasib Singh, Shamsheer Singh and Jagtar Singh Hawara have committed an offence punishable under Section 109 read with Section 302 of the Indian Penal Code and an offence punishable under Section 109 read with Section 307 of the Indian Penal Code; and accused Nasib Singh and accused Gurmit Singh have also committed an offence punishable under Section 5 of the Explosive Substances Act.

55. As per the above order, all the eight accused persons, who were put on trial namely Gurmeet Singh, Lakhwinder Singh, Jagtar Singh alias Tara, Navjot Singh, Nasib Singh, Shamsheer Singh, Balwant Singh and Jagtar Singh Hawara were accordingly charge sheeted. The contents of the charge sheet were explained to each of the accused persons in their own vernacular language to which they pleaded not guilty and claimed trial.

PROSECUTION EVIDENCE

56. In order to prove its case, the prosecution examined as many as 247 witnesses. A brief resume of their testimony along with their particulars and the role of these witnesses is as follows:

PW-1, Dr.Jagjiv Sharma, who had conducted the postmortem examination of the dead body of deceased Chamkaur Singh, Jagdish Singh, Tota Ram and Dhanwant Singh, accordingly proved his postmortem reports showing that death of these persons took place because of the injuries suffered in this blast.

PW-2 , Dr.J.R.Chauhan, who had conducted the postmortem examination on the dead body of Kultar Singh and Swaran Singh, accordingly proved his postmortem reports showing that death of these persons took place because of the injuries suffered in this blast.

PW-3, Dr.P.L Goyal, who had conducted the postmortem examination on the dead body of Sher Singh accordingly proved his postmortem report showing that death of the person took place because of the injuries suffered in this blast.

PW-4, Dr.J.K.Katra, who had conducted the postmortem examination on the dead body of HC Ajaib Singh and Rajinder Prashad, accordingly proved his postmortem report showing that death of the person took place because of the injuries suffered in this blast.

PW-5, Dr.Deepak Bakshi, who had conducted the postmortem examination on the dead body of Balbir Singh, accordingly, proved his postmortem reports showing that death of the person took place because of the injuries suffered in this blast.

PW-6, Dr.Inderjit Diwan had conducted the postmortem examination on the dead body of deceased Beant Singh, Dr. Anil Duggal as well as the postmortem examination of the two legs and a head, which was later on identified to be of assassin Dilawar Singh. Accordingly, this witness proved that on the request of the police he conducted the postmortem examination on the dead body of deceased Beant Singh, for which the dead body was identified by Shamsher Singh Dhillon, then Excise Minister Punjab and Shri Karam Singh Gill, then Industry Minister

Punjab, who was also brother in law of deceased Sardar Beant Singh, and accordingly he proved that after conducting the postmortem examination as per his report, Ex.PW6/5, he concluded that the deceased Sardar Beant Singh had died because of the injuries suffered in the bomb blast caused by an explosive device and it was an instant death.

He further proved that the proline suture of the deceased was identified by Professor M.M.Gupta of P.G.I, who had operated the deceased for paranumblical hernia a few months prior to this incident and he had also sought the help of PW-17, Dr.Amar Singh, BDS of Payal, who had recognized the denture of the deceased C.M as he had prepared the same about three months prior to this incident.

This witness has also proved that he being a member of board of three Doctors also conducted the postmortem examination on the dead body of deceased Anil Kumar Duggal, who also died in this bomb blast when standing near to the Chief Minister.

He further deposed that on 4.9.1995, two legs and a head were also produced before him for postmortem examination of the same and he examined those limbs from 5.9.1995 to 8.9.1995 and as per his report, Ex.PW6/43, he opined that both the legs appeared to be that of the same person and have been severed by a mutilated injury just above the knee joints and both the legs belongs to the same individual having a height of 5" 10 inch and to decide whether the legs and the head belongs to the same person he recommended a DNA test.

He further deposed that on 5.9.1995, Dr.Lalji Singh of Hyderabad came to his department and on the suggestions of Dr.Lal Singh, he obtained small pieces of scalp, small bunch of hair, a piece of muscle, a piece of bone from the head of the said unknown person and also muscle pieces from right leg and left leg and put them in small plastic bottle and handed them over to Dr.Laljit Singh.

Similarly the blood samples of Harnek Singh, Chamkaur Singh and the mother of deceased Dilawar Singh were

also taken in his presence and same were also handed over to Dr.Lalji for D.N.A profile.

He also proved that after the postmortem examination of dead body of Baldev Singh then MLA from Pacca Kalan, he found that he had also died because of the injuries suffered in the bomb blast.

PW-7, Kanwar Kishan, Senior Assistant has brought the record regarding medico legal reports of the injured which were brought to the Hospital and proved the same accordingly.

PW-8, Dr.Utpal Kumar has proved the injuries suffered by the injured Dhanwant Singh, who died later on because of the injuries suffered in the blast.

PW-9, Dr.M.Siriniwas has also proved the treatment record of the injured Baldev Singh and further deposed that deceased Baldev Singh died later on because of the injuries suffered in the blast.

PW-10, Dr.R.K.Sharma, Surgeon in the Deptt of Plastic Surgery, P.G.I had

accordingly proved the treatment given to the deceased Dhanwant Singh in his department.

PW-11, Dr.Om Parkash, who had examined one of the injured Jagdish Singh and Tota Ram, accordingly proved the medico legal reports of both and deposed that later on both of them died because of the injuries suffered in the blast. In addition to this he had also proved the record of the injuries and treatment of the injured Pala Ram and D.K.Tripathi.

PW-12, Dr.Manmohan Singh Gill had brought the original files of all the 10 injured persons admitted in General Hospital Sector 16 Chandigarh and proved the copies of record.

PW-13, Manjit Singh, Pharmacist had brought the OPD register of G.H Sector 16 Chandigarh, from period 16.8.1995 to 10.10.1995 and proved the same.

PW-14, Dr.Pankaj Arora, Emergency Medical Officer, Govt Medical College, Chandigarh, proved that on 31.8.1995 various persons with the

alleged history of having received injuries in the bomb blast were brought to the OPD and he accordingly examined Amar Singh, Bakshish Singh, Manojit Pal, Varinder Rana, Joginder Singh, Kesar Singh, Manmohan Singh, Upkar Singh and found various injuries on these persons as mentioned in the medico legal reports and all of them remained under treatment in the Hospital.

PW-15, Dr. Sushil Gupta, Medical Officer, General Hospital, Sector 16, Chandigarh, proved that on 31.8.1995 he examined injured Kulwant Singh, Satinder Kumar and both of them have suffered injuries because of the bomb blast.

PW-16, Dr. Sandeep Singh Sahini, who had conducted the postmortem examination on the dead body of Yash Pal, Laxman Dass, Mukhtair Singh and Ranjodh Singh accordingly proved that these persons died because of the injuries suffered in the bomb blast.

PW-17, Dr. Amar Singh, CMO, Dental Surgeon, was the family Doctor of deceased Beant Singh and he used to take care of the dental problem of deceased

Chief Minister and he accordingly deposed that on 01.09.1995 he came to Chandigarh and then went to P.G.I and on the asking of Dr.Bakshi he identified the denture of deceased Chief Minister and he found the same to be the same denture which he prepared for the deceased Sardar Beant Singh and he submitted his report Ex.PW6/4/A in this regard.

PW-18, Dr.Ishwar Lohana has treated one of the injured Pala Ram and he accordingly proved the treatment given by him.

PW-19, Dr.Rajinder Kumar was a Doctor on duty when the injured and dead persons were brought to the Hospital for treatment and postmortem examination and he accordingly proved those proceedings.

PW-20, Dr.J.L.Chaudhary is a formal witness who after receiving the information regarding blast deputed various Doctors for treatment & postmortem examination.

PW-21, Dr.A.S.Rathee, being Senior Resident of the Deptt of Plastic Surgery, P.G.I treated one of the

injured of bomb blast, D.K.Tripathy and accordingly proved the record in this regard.

PW-22, SI Hari Ram of Chandigarh Police Control Room, who has proved the various Traffic Net, Zebra Net, V.I.P Security Net, P.S.Central Net, P.S. East Net and P.S.South Net and has proved Ex.PW22/1 to Ex.PW22/5 with regard to the entries in the log book and of different nets. He has also proved the certification to the effect that it contains 380 pages from 17.8.1995 to 3.9.1995. The above documents were taken into custody vide memo Ex.PW22/6 and he also proved the signatures on the said document.

PW-23, C.Kartar Singh, No.2715 has deposed that he was posted as Constable in Police Control Room and was on duty on 31.8.1995 on G.O. Net from 12.45 pm till 7.45 p.m. Similarly on 1.9.1995 he was on duty from 7:52 hours to 12:45 hours and 19:45 pm to 7.45 a.m on 2.9.1995. He has further proved the entry, Ex.PW23/1 from page no.306 to 316 in the log book.

PW-24, Constable Balraj Singh

No.299, has proved that he was on duty on 31.8.1995 on P.S. East Net, Police Control Room, U.T. Chandigarh. He has also described with regard to the call signs used on wireless sets. He has also proved his entry at page no.287 regarding receiving message, Ex.PW24/1. He has also proved that on 3.8.1995 at 17:11 hours a message was flashed and the entry in this regard was made.

PW-25, Mohan Rajesh Shekhar has deposed that he was owner of the Car bearing registration No. DBD-949, in the year 1995 and Jagtar Singh Tara was employed with him as a driver. He has also rightly identified the accused Jagtar Singh Tara during the course of examination. He further stated that accused Jagtar Singh Tara remained absent from duty w.e.f 24.8.95 to 31.8.1995 and he resumed his duty on 1.9.1995 and worked for 1.9.1995 and 2.9.1995. But thereafter, he never returned back. He also deposed that he used to receive some telephone calls from Paramjit Singh and Raj for Jagtar Singh Tara.

PW-26, Smt.Revathi Raj Shekhar, who is the wife of PW-25, had corroborated the statement of PW-25 with regard to the ownership of car No. DBD-949 and employment of Jagtar Singh Tara in the firm of her husband. She has also deposed that on 23.08.1995, she received a message for Jagtar Singh Tara and passed on the same to Jagtar Singh Tara, who left Delhi on 24.8.1995 saying that he has some personal work. She has also rightly identified the accused Jagtar Singh Tara, to be the same person who was employed with her husband.

PW-27, C.Subhash Chander, No.781, was working in Wireless Control Room and was on duty on 31.8.1995 on P.S. Central Net. He has also proved the entry, Ex.PW22/4 made in the log book of Central Net covering the period 31.8.1995 and an entry, Ex.PW27/1 regarding sending force and checking of vehicles of the suspicious persons in the area and receipt of message was also confirmed.

PW-28, C.Rajinder Kumar was on V.I.P Net of Police Control Room. He has also proved different messages flashed between 17:11 hours and 17:30 hours.

PW-29, Gautam Singh was working as Wireless Operator in Police Control room and he has proved that he was on duty on 31.8.1995 and was posted in the Police Control Room on Zebra Net at that point of time. He has also proved his entry, Ex.PW28/1, regarding messages received about blast in Civil Secretariat.

PW-30, HC Mohinder Singh was on duty on 31.8.1995 and made entries in the roznamacha register w.e.f 27.8.1995 to 10.9.1995. He has according, proved the entry vide DDR No.32, in relation to the flashing of the message, Ex.PW30/1 and Ex.PW30/2 entry in the roznamacha of DDR at serial no.33, which was made in his own hand writing. This witness has also proved that the ruka, Ex.PW30/3, was received by him, on the basis of which FIR No.96 of 1995, Ex.PW30/4, was registered, which was in his hand writing. An entry in DDR at serial no.36 regarding the receipt of Ex.PW30/3 ruka was made. This witness has also proved an entry to the effect that copy of FIR, Ex.PW30/6 was delivered to Shri A.K.Jain then Area Magistrate.

PW-31, Sq.Commdr. P.K.Joshi, was the incharge of Task Force Command Chandigarh of the National Security Guards which provides mobile security to Beant Singh, then then Chief Minister Punjab and Shri Bhajan Lal, then chief Minister Haryana and he deposed that on 31.8.1995 he was incharge of Task Force in National Security Guard and he further proved that on behalf of Task Force and on receiving information regarding bomb blast in Civil Secretariat he reached at the spot and found that Beant Singh then Chief Minister was lying dead there along with some other casualties and there was extensive damage to the building of Secretariat and he accordingly directed his force to cordon the area and removed the dead bodies to the Hospital and remain present at the spot. During the investigations and all the arms and ammunitions of the security agency lying at the spot and also reported the list of missing arms and ammunitions. He also deposed that he received the dead bodies of his force and sent the same to the towns of the deceased persons vide receipt, Ex.PW31/1. He has also proved the postmortem report, Ex.PW2/11, of

Kultar Singh which bears his signatures at point A and at point B and also bears the signature of R.K.Bhattacharji, Team Commander. He further proved the postmortem report, Ex.PW4/22 of Rajinder Parsad which bears his as well as the signatures of Bhattacharji at point A and B and he also proved the postmortem report, Ex.PW5/11 of Dalbir Singh and same bears his as well as signatures of R.K.Bhattacharji at points A & B.

PW-32, Subhash Kumar Dutta has deposed that he was employed in Bhartiya Kala Kender and retired in 1987. He further deposed that he had purchased an old Ambassador Car bearing registration No. DBA 9598, from one Paul Singh and he proved the registration certificate of the car mark WW. He further proved that he insured the car and Ex.PW32/1, is the certificate of Insurance which was issued by the Insurance Company. He further deposed that he sold the car, Ex.76 to accused Jagtar Singh Tara and Jagtar Singh Hawara and delivery receipt of Car, Ex.PW32/2, bears the signatures of Jagtar Singh Tara as Basant Singh at point B. The witness has identified the accused Jagtar Singh Tara, who has put

his signature on Ex.PW32/2, as Basant Singh. This witness has also identified accused Jagtar Singh Hawara, who has accompanied Jagtar Singh Tara.

PW-33, Tarlochan Singh, is an electrician and also deals in the business of sale & purchase of Scooters, which he operates from his residence. This witness deposed that accused Paramjit Singh had given him Scooter bearing registration No. DL-5S-F-0318 for sale and its papers were taken into possession by CBI vide memo Ex.PW33/1, which bears his signatures as well as of Harjit Singh, his cousin at point B. This witness has also handed over the insurance cover note Mark XX and Harjit Singh had put his signatures at point A and he also handed over the sale letters, which bears the signature of one Jagtar Singh, which are mark XX/1 to XX/4, delivery receipt, mark XX/5, which also bears the signatures of Harjit Singh at point A. This witness has also proved the Scooter, Ex.P70, which was handed over to him by accused Paramjit Singh, out side the court premises.

PW-34, Kamalpreet Walia, who

was working as an agent for sale purchase of Scooters and vehicles, deposed that Scooter make Bajaj Chetak of 1990 Model, bearing registration No. PB-11-1955, was purchased by him from Amar Singh in the month of July, 1995 and after repairing the same, he sold the same to deceased Dilawar Singh, who was known to him through accused Lakhwinder Singh, on 16 or 17.8.1995 and he also handed over the registration certificate and asked for the name of the person in whose name the permission is to be issued but it was never taken. He further deposed that he also handed over the original affidavit of Amar Singh, Ex.PW34/1, to the C.B.I along with form No. 29 and form No.30 Ex.PW34/2 to Ex.PW34/4. He also identified the photo graph, mark YY, of Dilawar Singh and put his signatures at point-A and also identified the Scooter as Ex.P70 in the court.

PW-35, P.Ganpati, a Journalist by profession was working in the office of UNI for collecting news and deposed that on 31.8.1995, he received a fax message from Babbar Khalsa International claiming responsibility for assassination

of deceased Beant Singh. He further deposed that on 6.9.1995 he received another fax message in this regard and proved the copies of both those messages as mark AAA and mark BBB along with its photo copies mark AAA/1 and mark BBB/1 respectively.

PW-36, Anand Parkash, Upper Division clerk, in the Transport Authority Loni Delhi, proved the ownership of the Scooter No. DL-5SF-0318 to be in the name of Jagtar Singh s/o Sandhu Singh, r/o Delhi and deposed that file, Ex.PW36/1 of the same was taken into possession by the CBI as per memo Ex.PW36/2.

PW-37, Jagtar Singh has also proved the ownership of the Scooter as stated by PW-36.

PW-38, K.N.Prabhakar, who was working as Personal Assistant to the Editor Hind Samachar Group of News Paper, Jalandhar deposed that on 31.8.1995, he received fax messages mark DDD and mark EEE from Babbar Khalsa International in relation to the assassination of Sardar Beant Singh and similarly on 7.9.1995

they again received fax message mark FFF for the same reason, which he later on handed over to C.B.I.

PW-39, Chander Mohan Bakshi, who was working as SP in the CM Security Punjab, deposed that on 31.8.1995, he left the civil secretariat after instructing the staff about the further programme of Chief Minister but on the way he heard a loud explosion and immediately rushed back to the spot and found that a bomb blast had taken place in Civil Secretariat near the car of Chief Minister as a result of which Chief Minister Beant Singh along with other persons were lying dead and he accordingly started evacuation of the injured and remained present during those proceedings.

PW-40, Salamat Masih, who was on duty at the residence of then CM Punjab and his duty was to carry out the anti sabotage check in the CM's residence lawns and vehicles and deposed that on 31.8.1995 he carried out the anti sabotage check of the residence and its surroundings as well as the vehicles forming part of CM's convoy and cleared

the same. He further deposed that after the blast he reached at the spot. But he was not allowed to go near to the vehicles.

PW-41, Hem Chand, who was posted as DSP of the security wing of CM Punjab deposed that on 31.8.1995 he was on duty at CM's office and at about 5.05 p.m the CM left his office. But after 7-8 minutes he heard an explosion and immediately came down and found the bomb blast and took the remedial steps.

PW-42, Amar Singh, s/o Mukand Singh was the earlier owner of the Scooter bearing registration PB-11-1955 and deposed that after purchasing the scooter from Major Singh, he sold the same in July, 1995 to one Kamalpreet Walia and handed over the registration book and one affidavit and two form for transfer of the same which are Ex.PW34/1 to Ex.PW34/4 and also identified the scooter as Ex.P77.

PW-43, Kaish Kumar, Clerk of the Office of DTO, Ludhiana proved the name of the registered owner of the Scooter bearing registration no.PCP 2085 and

deposed that earlier it was in the name of Vijay Chopra but in the year 1993 it was transferred in the name of Harjit Singh s/o Bhagwan Singh, r/o Patiala and he handed over the record to the CBI.

PW-44, Sampuran Singh, Clerk, DTO Office, Patiala proved the ownership of Scooter bearing registration No. PB-11-1955 and deposed that it was registered in the name of Darshan Singh s/o Gurbax Singh but later on it was transferred in the name of Major Singh s/o Gurbax Singh and then it was transferred in the name of Amar Singh s/o Mukand Singh in the year 1995 and he handed over this record to the CBI.

PW-45, Vijay Kumar Chopra, who was the original owner of the Scooter bearing registration no.PCP-2085 deposed that he had sold the above Scooter to Harjit Singh s/o Bhagwan Singh in the year 1992 as per the document, Ex.PW43/2 to Ex.PW43/5, which were handed over to Harjit Singh along with the Scooter. He also identified the said Scooter in the Court.

PW-46, Manjit Singh deposed that

scooter bearing registration No. PCP-2085 was sold to Vipin by Harjit Singh in his presence.

PW-47, Harjit Singh also deposed that he purchased the Bajaj Chetak Scooter bearing registration No. PCP-2085 in the year 1992 and then sold it to Deepinder @ Vipin s/o Chaman Lal with the help of PW-46, Manjit Singh and handed over the scooter and documents to him along with the affidavits and he also identified the scooter in the court.

PW-48, Ranjit Singh, owner of Ranjit Work Shop Sector 7 Chandigarh deposed that on the request of Surender Sharma in the last week of August, 1995 he allowed Surinder Sharma to use the back yard of his service station to paint a car.

PW-49, ASI Arun Kumar was working as a Traffic Police Official and deposed, that on 24.8.1995 he challaned accused Balwant Singh along with his companion, Jagtar Singh Hawara while travelling on Scooter No.PB-11-1955 as per the challan chit, Ex.PW49/1 for not possessing the driving license and

accused Balwant Singh signed the challan chit and he took into possession the RC of the Scooter and later on handed over these documents to CBI. He further deposed that he identified the photographs of Balwant Singh and Jagtar Singh Hawara Ex.PW49/3 and Ex.PW49/4 and he has also identified both these accused persons in the court at the time of his evidence.

PW-50, Tirlok Nath, a painter working in Rehri market Sector 7 deposed that in the month of August, 1995 on the asking of Surinder Sharma, he painted two number plates bearing registration No. DBA-9598 and identify the same in the court also, on the car, Ex.P76.

PW-51, Surinder Sharma, proprietor of Surindera Spray paint Sector 7 Chandigarh, deposed that he knows accused Lakhwinder Singh through Madanjit Singh @ Channa and Dalbir Singh @ Maula and he painted the Scooter of Lakhwinder Singh bearing registration No. PCP-2085. He further deposed that on 26.8.1995 on the asking of Lakhwinder Singh he repainted Car bearing registration No. DBA-9598 into off white

colour and handed over the same to Lakhwinder Singh and one more person who accompanied him. He further deposed that on 5.9.1995 Lakhwinder Singh was arrested by the police in his presence from his house at Village Kansal and he also identified the accused present in the court. He also identified the Scooter of Lakhwinder Singh as Ex.P80 and deposed that the scooter was recovered from the possession of accused and was taken into possession by the CBI vide memo, Ex.PW51/1. He further deposed that on 26.8.1995, the other person accompanying Lakhwinder Singh, who was identified as Gurmeet Singh, was also arrested in his presence and he also identified the photographs of these accused persons and also identified them in the court.

PW-52, P.K.Mehra was the incharge of the deployment of the CRPF jawans at the resident of CM Punjab and in the escort and the pilot vehicles of the CM and he accordingly named the official deputed on 31.8.1995 for this purpose.

PW-53, HC Baljit Singh was the driver of one of the cars of the convoy

of the deceased C.M and he accordingly deposed that on 31.8.1995 after reaching civil secretariat he along with other drivers of the remaining two cars parked in the porch and at about 5.10 p.m when C.M came down and sat in one of the cars, which was being driven by C.Jagdish, a bomb blast took place as a result of which the driver Jagdish Singh and deceased Beant Singh died at the spot along with other persons.

PW-54, Deep Inder Mehta is a friend of accused Lakhwinder Singh, Balwant Singh, Gurmeet Singh and deceased Dilawar Singh since 1987-88 and deposed that Scooter No. PCP-2085 was purchased by him from one Harjit Singh along with the affidavit Ex.D-9. But later on it was purchased by accused Lakhwinder Singh in the name of his mother and father and receipt, Ex.PW54/1 was prepared. Later on he handed over these documents to the C.B.I. He further deposed that in the month of August, 1995 on the request of Dilawar Singh he took him to Kamalpreet Walia and Dilawar Singh agreed to purchase Scooter from Kamalpreet Walia bearing No. PB-11-1955, Ex.P77, and after purchasing the same he along with Dilawar

Singh handed over the Scooter to accused Balwant Singh.

PW-55, Reema Kahlon was working as S.T.D Operator in a booth set up in the ground floor of house no.981 Phase-IV, SAS Nagar Mohali under Avtar Singh, owner of the STD, and she accordingly deposed that first floor of the house was occupied by accused Gurmeet Singh and one S.P.Singh, who are the tenants of the owner of the STD, Avtar Singh and about 2-3 days prior to 31.8.1995, 2-3 young man had visited the room of Gurmeet Singh and she disclosed this fact to the C.B.I and also identified the photographs of those persons which includes the photograph of deceased Dilawar Singh mark YY/2.

PW-56, Manojit Pal was the member of the CRPF Escort party deputed for the security of C.M and deposed that at about 5.00 p.m on 31.8.1995, when they were ready with their escort vehicle, an explosion took place in the Civil Secretariat and he suffered injuries and becomes unconscious.

PW-57, Kesar Dumra, who was

working as Peon in the Civil Secretariat also deposed about the explosion on 31.8.1995.

PW-58, Satinder Kumar, who was working as driver with Sardar Harcharan Singh, then Health Minister of Punjab, also deposed about the explosion which took place in the Civil Secretariat, when he went there along with Sardar Harcharan Singh Brar.

PW-59, C.Balwinder Singh, who is working in the Motor Transport Department of Punjab Police, Chandigarh deposed that accused Lakhwinder Singh was also working with him in the same department and he identifies the writing of the Lakhwinder Singh when shown to him and deposed that the document, Ex.PW59/A to Ex.PW59/D are in writing of Lakhwinder Singh and bears his signatures at point-A. He had also identified the hand writing of the accused Lakhwinder Singh on the documents, Ex.PW51/3, Ex.PW59/E to Ex.PW59/L and he has also identified the accused Lakhwinder Singh in the Court.

PW-60, Raju Tamir Haran, grand son of deceased Bhushan Sirhindi has

deposed that his maternal grand father Bhushan Sirhindi was a Journalist and accused Balwant Singh was working as gunman with him and he used to reside with his grand father and he identified and recognized accused Balwant Singh. He also deposed that accused Balwant Singh had purchased a Green colour Bajaj Chetak Scooter, Ex.P77 and he used to come to their residence on this Scooter. He further deposed that he also knows deceased Dilawar Singh, who was friend of Balwant Singh and he used to visit Balwant Singh at their residence and office and he has also identified the photographs of Dilawar Singh mark-YY and YY/1 to YY/5. One more fact disclosed by this witness was that about 2-3 months prior to the incident in question he attended a call for Balwant Singh and the person who was calling identified himself as uncle of Balwant Singh and asked him to convey the message to Balwant Singh that he should meet him at Gurudwara Shish Ganj, Delhi and he accordingly passed on the message. He also identified the hand writing of Balwant Singh, on Ex.PW60/A, the hand writing in the diary, Ex.PW60/5-1 to Ex.PW60/5-53 and also identified his signatures on Ex.PW60/BB.

One important fact which comes from the cross examination of this witness is that since this witness has deposed against the accused Balwant Singh and when opportunity was granted but Balwant Singh, who himself was conducting his trial, he had given a writing in his own hands, **Ex.CD/1** in which he admitted that whatever stated by this witness is correct and he do not want to cross examine him.

PW-61, HC Sukhbir Singh has brought the service record of deceased Dilawar Singh and proved the appointment letter of Dilawar Singh, **Ex.PW61/A** and **Ex.PW61/B** and further deposed that deceased Dilawar Singh was dismissed from services vide order dated 7.10.1994 w.e.f 18.9.1994, as per the order copy of which is **Ex.PW61/C**.

PW-62, C.Sukhwinder Singh has brought the service record of accused Balwant Singh and proved his service book, **Ex.PW62/A** and deposed that accused Balwant Singh has joined as constable in Punjab Police on 1.10.1987 and he was posted as Gunman with the Bhushan Sirhindi a Press Reporter in Patiala

since 19.5.1993.

PW-63, Avtar Singh was the owner of the STD booth located in Plot No.981, Phase IV, Mohali and he accordingly deposed that on the first floor of his house there was one room set which was rented out by him to one Satinder Pal Singh @ Simpi, who was also sharing the room with accused Gurmeet Singh as co-tenant. He also deposed that Reema Kahlon was working as STD Operator on his STD booth and he identified the hand writing of Reema Kahlon on the STD register and also identified accused Gurmeet Singh in the court.

PW-64, Arvind Kumar Parashar, an employee of the B.P.L Engineering Limited, brought the service record of accused Gurmeet Singh and deposed that this accused was working under him and accused Gurmeet Singh used to put his attendance in the attendance register and he accordingly proved the attendance register, Ex.PW64/A to Ex.PW64/C. He also proved leave card record of accused Gurmeet Singh, Ex.PW64/A and identified the signatures of accused Gurmeet Singh on the same. He also deposed that on

31.8.1995 accused Gurmeet Singh was on leave. But he was present on his job on 1st & 2nd September, 1995 and thereafter he was on leave on 4th as 3rd September was Sunday and thereafter he attended his duties on 5.9.1995 but remained absent thereafter.

PW-65, V.K.Maheshwari, who was posted as Metropolitan Magistrate, in Patiala House, Court, New Delhi deposed that on 22.1.1996 accused Balwant Singh was produced before him for recording his confession by the CBI as per the orders of ACMM and accordingly after complying procedural requirement and satisfying himself, that there is no coercion, pressure or threat etc, he recorded the confessional statement of accused on 23.1.1996, Ex.PW65/E and after recording the same it was read over and explained to the accused who put his signatures on each page of the same and thereafter he certified it and sent to ACMM who forward it to CJM, Chandigarh.

PW-66, C.Iqbal Singh was working as a driver on one of the three Cars of the deceased CM. Accordingly he deposed that on 31.8.1995 he was on duty

as Driver on Car bearing registration No. PB-27-6514 and in the evening when they parked the cars in VIP porch in the Civil Secretariat as the CM Beant Singh is to go to his house and at about 5.00 PM when Beant Singh came down and tried to sit a bomb explosion took place resulting into the death of the CM and other persons.

PW-67, T.P.Yadav, an employee in B.P.L Sanyo Limited, deposed that accused Gurmeet Singh was working in their concern and he availed leave during his job and he handed over the leave record to the C.B.I, as per the memo, Ex.PW67/A. He also identifies the leave card of Gurmeet Singh, Ex.PW64/B to Ex.PW64/D, which he handed over to the Police.

PW-68, Puran Chand was the tenant in a shed in the ground floor of plot no.981 Phase-IV Mohali owned by Avtar Singh and he deposed that on the first floor of the above building, above the STD booth, accused Gurmeet Singh along with one SP Singh, was residing and he also identified Gurmeet Singh in the court and he further deposed that on 28.8.1995, when he went into the room of

accused Gurmeet Singh to get some medicine for toothache, he found that five persons were sitting in that room including Gurmeet Singh and when Gurmeet Singh stated that he has no medicine he came down. He further deposed that even on 31.8.1995 he saw one of the those four persons in the room of Gurmeet Singh and two boys had also came in a Car and then went away and one of them was wearing police uniform and later on, on 6.9.1995 he identified the photographs of those persons. He accordingly identifies photographs mark FFFF, YYY-3, mark GGGG, mark HHHH and disclosed that later on he came to know that the person shown in photo graph mark FFFF is Jagtar Singh Hawara. He further deposed that on 8.9.1995, when the accused Gurmeet Singh was arrested, he suffered disclosure statement, Ex.PW68/A in his presence and as per that statement accused Gurmeet Singh took the CBI Police party to H.No.981, Phase-IV Mohali and a search of house was conducted and some articles were collected from the house and were taken into possession as per the memo, Ex.PW68/B. He also identified accused Balwant Singh and Jagtar Singh Hawara as the persons, who had been visiting

Gurmeet Singh between 26.8.1995 to 31.8.1995.

PW-69, Madanjit Singh Chhina is stated to be a friend of Lakhwinder Singh and deposed that he met deceased Dilawar Singh in the house of Lakhwinder Singh and later on identified the photo graph of Dilawar Singh mark TTT/1, TTT/2, YYY/5. He further deposed that on 31.8.1995 he met Lakhwinder Singh at Shanker Dhaba near Civil secretariat along with Dalbir Singh @ Maulla and thereafter on 2.9.1995 he again went to Village Kansal, where Lakhwinder Singh and Dalbir Singh @ Maulla met him and they took liquor in the house of accused Lakhwinder Singh.

PW-70, Parnab Sain, an Administrative Officer of National Insurance Company deposed that on 8.9.1995 accused Gurmeet Singh made a disclosure statement, Ex.PW68/A relating to this case and thereafter the search of his room was conducted and the incriminating articles were recovered as per the memo, Ex.PW68/B in his presence and he accordingly identified the accused Gurmeet Singh and his photographs.

PW-71, Rajiv Singh was posted as Reception Officer in the Office of CM and he accordingly deposed regarding the name and identity of the person who visited Beant Singh on 31.8.1995.

PW-72, Prem Singh, who was employee of Pritam Cycle Stand, Bus Stand, Patiala deposed that Kirat Mohinder Singh, was the owner of the Cycle stand and the Scooter bearing registration No. PB-11-1955, Bajaj Chetak of Cream Colour, Ex.P77, was parked in their cycle stand on 31.8.1995 at 6.40 P.M and after parking the scooter he issued the slip, Ex.PW72/1 and also pasted the chit on the helmet Ex.P94 along with the registration number of the Scooter and on 10.9.1995 he identified the photo graph of that person as mark QQQQ, when in his presence and in the presence of Kirat Mohinder Singh and the Scooter was also taken into possession and it was searched there. On search of the dicky of the scooter, a cloth belt, Ex.P97 of Green Colour was recovered and taken into possession safter converting into sealed parcel vide memo of recovery, Ex.PW72/2 and he also identified accused

Balwant Singh as the person who parked the Scooter .

PW-73, Kirat Mohinder Singh is the owner of Cycle Stand and he also corroborated the version of PW-72 as discussed above.

PW-74, Amrik Singh, who was a taxi driver on taxi bearing registration DAJ-431 deposed that on 28.8.1995, when he was present at the Janta Taxi Stand, Patiala, two persons took his taxi for Mohali and they loaded two bags and on the way they delivered the bags to a person standing near the Gurudwara near Bus Stand Mohali and then left his Taxi. He further deposed that later on he identified the photographs of those persons as mark UUUU and mark UUUU/1 and signed the same.

PW-75, Jasbir Singh, who was a Tailor master running a shop in the name & style of Stitch Co in AC Market, Patiala, deposed that accused Balwant Singh used to come to his shop being a Punjab Police Official and was known to him and on 24.8.1995, he along with one more person, who was later on identified

as accused Jagtar Singh Hawara, came to his shop and asked for stitching a cloth belt as per the diagram prepared by Jagtar Singh Hawara and as per the measurement of that person, he accordingly noted the measurement on the bill book, copy of which is Ex.PW75/A-1 and they also purchased clothes for two pants and ordered the stitching of the same with a direction to deliver on the same evening. He further deposed that accused Balwant Singh came on the next day i.e on 25.8.1995 and took the delivery of one belt and pant and he placed order of another cloth belt of the same design of green colour and he accordingly noted this fact on the earlier slip and on 27.8.1995 both accused Balwant Singh and Jagtar Singh Hawara took the delivery of pant and second belt and he also identified the second belt of green colour, article-Ex.P-97, as the same belt, which was stitched on the asking of Balwant Singh and further deposed on 20.1.1996 accused Balwant Singh identified his shop on his presence and in the presence of CBI official and he handed over the bill book and the measurement slip, which was taken into possession as per the memo,

Ex.PW75/B and he also identified the photographs of other person mark WWWW and WWWW/1 and identified his signatures and he also identified accused Jagtar Singh Hawara as the other person, who accompanied Balwant Singh.

PW-76, Amarjit Singh, who is also tailor master and running a shop in the name & style M/s Sidhu Tailors, Tripuri Town, Patiala deposed that on the asking of accused Balwant Singh, who was known to him, he stitched Police uniform for accused Balwant Singh and his friend Dilawar Sinigh, as per the bill-cum measurement memo, Ex.PW76/1-A and delivered the same to them on 27.8.1995 and later on he also stitched five more uniforms on the asking of Balwant Singh and delivered it to him as per the bill cum measurement slip, Ex.PW76/1 and he identified the accused Balwant Singh and photo graph of Dilawar Singh in this regard.

PW-77, C.Pala Ram, who was on duty at VIP gate and in whose presence this bomb blast took place, accordingly informed the matter to the police as to how the bomb blast took place and deposed

accordingly.

PW-78, D.K.Tripathy was the SP CM Security and he accordingly deposed about the security arrangement and the placement of cavalcade of the CM under different security agencies and also deposed that on 31.8.95, he was on duty as SP Security and at about 5.05 p.m, when the CM Beant Singh, was to leave the Civil Secretariat for U.T Guest house and when he was about to get into the car a powerful explosion took place resulting into the death of other persons and CM and he was also injured in the blast and becomes unconscious.

PW-79, Gurdeep Singh, who was also working as Incharge of the CM Security deposed about the security arrangement of the Beant Singh and the formation of cavalcade and further deposed that after receiving the information of explosion he rushed at the spot and found that deceased Beant Singh died because of explosion along with other persons.

PW-80, Kirpal Singh, who was working as Account Officer in the Office

of Chief Engineer deptt. of Telecoms was the person in whose presence, accused Jagtar Singh Tara, since proclaimed offender suffered a disclosure statement, Ex.PW80/1 and he signed the same as an attesting witness and deposed accordingly.

PW-81, Raghubir Singh, who was the Sarpanch of Village Jhingra Kalan and in whose presence the disclosure statement of accused Nasib Singh was recorded and the recovery of RDX was made, deposed that accused Nasib Singh is the resident of Village Jhingra Kalan and on 18.9.1995, he was called by the CBI authorities in the house of Nasib Singh where RDX was recovered and taken into possession by the Police but he failed to support the story of the prosecution in total but admitted that disclosure statement of accused Nasib Singh Ex.PW81/1, seizure memo of the RDX Ex.PW81/2, the paper chit containing the sample seal, Ex.PW81/3 bears his signatures and during his cross examination he admitted that RDX was weighed and found to be 13kg.-700gms. and sealed in his presence in the katta article P-98. He also admitted that he

signed these documents accepting the version of the Police mentioned therein as correct voluntarily without any coercion or force, being the sarpanch of the Village. He also admitted that he never made any complaint to any police authorities regarding no recovery of any RDX from the possession of accused Nasib Singh.

PW-82, Dr.R.K.Banta was the SMO on duty on 31.8.1995 and he accordingly deposed that all the injured brought to the P.G.I were examined by him and under his instructions by the various Doctors and the medico legal reports were prepared.

PW-83, Jasbir Singh, owner of H.No.68-A, Rattan Nagar Patiala deposed that one room atop the porch on the Ist floor was on rent with accused Balwant Singh and he accordingly identified the accused Balwant Singh in the court and further deposed that on 5.9.95 this room was searched by the CBI authorities in his presence and all the articles found there were taken into possession as per memo Ex.PW83/1 which was signed by him.

PW-84, Gurdev Chand, Custom Inspector was the witness in whose presence the house where accused Balwant Singh was residing was searched and articles were recovered as per memo, Ex.PW83/1 and he deposed accordingly on this aspect.

PW-85, G.D.Achint, who was working as Personal Assistant to AGM of Central Bank of India, Chandigarh, was a witness in whose presence H.No.1223 Mohalla Gurunanak Nagar, Patiala, where deceased Dilawar Singh was residing, was searched and he accordingly deposed that all the articles recovered from the room were taken into possession as per memo, Ex.PW85/1.

PW-86, Balbir Singh, then Special Judicial Magistrate, CBI, Punjab, Patiala deposed that on 22.9.1995 accused Jagtar Singh @ Tara suffered a confession and after satisfying himself about the requirements of the law, he recorded the confession of accused Jagtar Singh Tara, Ex.PW86/6.

PW-87, Rajinder Kumar was then Metropolitan Magistrate, New Delhi and he

deposed that on 6.1.96 on the request of the prosecution he recorded the statements of witnesses Tejinder Pal Singh, Gurpreet Singh and Gurinder Singh Ex.PW87/7, Ex.PW87/11, Ex.PW87/17 respectively.

PW-88, Bodh Ram Garg, Senior Telephone Operator, deposed that on 12.9.1995 CBI conducted the search of house of Jaswant Singh, resident of Village Mehraj, in his presence and recovered the articles including an album containing the photographs as per the memo, Ex.PW88/1 and all the photographs, were also signed by him. He further deposed that the said Jaswant Singh was also present at the time of search in his house.

PW-89, Inspector Hardip Singh was a witness in whose presence H.No.68-A Rattan Nagar, Patiala, was searched and all the articles lying there were recovered as per memo, Ex.PW83/1 and deposed accordingly.

PW-90, D.P.Singh, who was the Chief Investigating Officer of this case from 4.9.1995 to 7.9.1995, accordingly

deposed about the investigation carried out by him during these period.

PW-91, Ram Singh, who was a co-employee of accused Navjot Singh, identifies the hand writing and signatures of Navjot Singh on the documents, Ex.PW90/1 to Ex.PW90/11 and the writing in the diary, Ex.PW91/23 to Ex.PW91/30 and deposed accordingly.

PW-92, Gurpreet Singh, who was also a co-employee of accused Navjot Singh, identifies the hand writing and signature of Navjot Singh on the documents, Ex.PW90/1 to Ex.PW90/13 as well as on the documents, Ex.PW91/12 to Ex.PW91/22 but he refused to identify the hand writing and the signatures of accused Navjot Singh on the documents Ex.PW91/23 to Ex.PW91/30 and deposed accordingly.

PW-93, Major S.S.Bedi, who was a security Adviser in Ranbaxy Lab, where accused Navjot Singh used to work, handed over the documents related to the service record of accused Navjot Singh to CBI and accordingly deposed that he handed over the documents, Ex.PW91/1 to Ex.PW91/13,

which were taken into possession as per memo, Ex.PW93/1.

PW-94, Gurpreet Singh, who was a friend of PW-95, Tejinder Pal Singh, deposed that during his stay in the Hostel of Jaswant Rai Chauhan, College Nagpur, he met accused Balwant Singh and Dilawar Singh, who were friend of Tejinder Pal Singh and they used to stay in their room in Laxmi Nagar, Nagpur and he accordingly identified the photographs of accused Dilawar Singh and Balwant Singh. He further deposed that on 1.9.1995 his friend Tejinder Pal Singh told him that a phone call has been received from Balwant Singhj that he is coming to Nagpur because he had killed Beant Singh and accordingly on 2.9.1995 at about 5.06 p.m, accused Balwant Singh reached Nagpur and then went to Amba Jhari along with Tejinder Pal Singh and he also went there and met them, where accused Balwant Singh disclosed all the details under which, he and his other co-accused killed S.Beant Singh. Thereafter he(Balwant Singh) stayed in their room and on the next day, he was shifted to some Hotel and he stayed there in the name of Sandeep Sharma and he accordingly

proved the record of Hotel in this regard to be in his hands and further deposed that accused Balwant Singh further resides at other Hotels of Nagpur.

PW-95, Tejinder Pal Singh, who was friend of accused Balwant Singh has also deposed as per the facts disclosed by PW-94, Gurpreet Singh also deposed that he was knowing Balwant Singh & Dilawar Singh, as they were residing in the same street and were his childhood friends. He also reiterated the facts disclosed by PW-94 and proved the extra judicial confession of accused Balwant Singh in detail and how and where Balwant Singh was kept by him at Nagpur and other places.

PW-96, Gurmeet Singh, a Dhaba owner, deposed that on 31.8.1995 accused Gurmeet Singh along with one young man visited his dhaba in the after noon and asked for the lunch and he accordingly identified the photographs of those persons and also identified the accused Gurmeet Singh in the court.

PW-97, Shanker Lal Yadav, who was also running a dhaba near Civil

Secretariat near local bus stand deposed that he was knowing accused Lakhwinder Singh being a driver Constable in Punjab Civil Secretariat and on 31.8.1995 accused Lakhwinder Singh along with Maula and Channa came to his dhaba at about 1.00 PM and took meal and went away and he identifies accused Lakhwinder Singh in the court in this regard.

PW-98, Balwinder Singh, who was a witness of identity of the accused persons, failed to support prosecution and was declared hostile.

PW-99, Chamkaur Singh, who is brother of deceased Dilawar Singh, is one of the most material witnesses of the prosecution and deposed that on 30.8.95 he met his brother Dilawar Singh for the last time along with Balwant Singh as they stayed in his house for the night and on the next morning they left his house in the white colour ambassador car bearing No. DBA-9598 and later on he came to know that this car is involved in the bomb blast which took place in Civil Secretariat killing Chief Minister and other persons and came to know that his brother Dilawar Singh is involved in this

assassination along with accused Balwant Singh and he accordingly identify the photo graph of accused Balwant Singh, Gurmeet Singh, Lakhwinder Singh and his brother Dilawar Singh and also identified them in the court and further deposed on 5.9.1995 he identifies two legs and a skull to be of his brother and thereafter their blood samples were also taken and ultimately the two legs and the skull was handed over to them for cremation on their application and he accordingly deposed all the above facts in detail.

PW-100, Dilbagh Singh, who was working in the Intelligence Branch and was handling counter intelligence and counter terrorism cases, deposed about the constitution, modus operandi and working of various militant outfits including Babbar Khalsa International, which has planned the murder of deceased Beant Singh and he accordingly produced the copies of the records relating to the activities of the Babbar Khalsa International and the statement of Babbar Khalsa International, after the murder of C.M, Ex.P-137 to Ex.P-149, showing how Babbar Khalsa International hatched the conspiracy to kill the Beant Singh and

how they reacted after this incident.

PW-101, Satwinder Singh @ Satwinder Pal Singh @ Simpy was the person who was residing with accused Gurmeet Singh in H.No.981 Phase-IV Mohali, owned by Avtar Singh and he accordingly deposed that he along with accused Gurmeet Singh took this house on rent and thereafter he becomes friendly with Gurmeet Singh and during a, marriage ceremony Gurmeet Singh introduced deceased Dilawar Singh and later on, prior to this occurrence on 28.8.1995 some friends of accused Gurmeet Singh including Dilawar Singh, Lakhwinder Singh, Balwant Singh and Jagtar Singh Hawara stayed in their room and were found by him doing something on news paper and on 29.8.1995, all of them left the room and later on he identified photographs of all of these persons mark-OOOOO, mark-PPPPP, mark-QQQQQ and he also identified all these accused persons in the court.

PW-102, Kuljit Singh was the school mate of accused Balwant Singh and accordingly deposed about the education and posting of Balwant Singh in Punjab

Police and his residing at H.No.68-A Rattan Nagar, Patiala. He also deposed that accused Gurmeet Singh present in the court was introduced to him by Balwant Singh along with his other friends Tejinder, Gurmeet Singh, Charanjit Singh etc. Lastly, he deposed that on 1.9.1995 accused Balwant Singh came to his Quarter near G.R.P, Police Station, Ludhiana and he was perplexed at that time and was also clean shaven and on inquiry accused Balwant Singh deposed that since he and his companions had committed the murder of Beant Singh, he i.e PW-102, should inform his family at Raijona not to disclose anything about his whereabouts. He further deposed that Balwant Singh also disclosed that deceased Dilawar Singh acted as human bomb and accused Jagtar Singh Tara drove Dilawar Singh in a Ambassador Car to Civil Secretariat and that car remain parked there. He also identified the photographs of the accused Dilawar Singh and accused Gurmeet Singh besides identifying them in the court.

PW-103, Dinesh Kumar Sharma was the Metropolitan Magistrate at Patiala Courts House, New Delhi in the month of December, 1995 and on the request of

C.B.I, on 16.12.1995, he recorded the confession of accused Shamsher Singh @ Shera and accordingly deposed about all the proceedings for recording the confession and also deposed that he recorded the confession of this accused, Ex.PW103/G after satisfying that he is not under any threat, duress and coercion and voluntarily made the same.

PW-104, Raman Kumar was friend of Satinder Pal Singh @ Simpy, who deposed that accused Gurmeet Singh was sharing room with that Satinder Pal Singh @ Simpy and further deposed that on 1.9.1995, when he visited the room, he found that apart from Gurmeet Singh, four other persons were sitting there. But he failed to identify any of the accused persons.

PW-105, Avinash Mehta was the Superintendent of Central Excise and Custom Chandigarh in the year 1996 and he accordingly deposed that the handwriting of accused Gurmeet Singh and Lakhwinder Singh were taken in their presence in Hindi, English and Punjabi and he accordingly attested the same.

PW-106, H.L.Ramchandani was a witness, in whose presence the specimen signatures and the writing in English of accused Balwant Singh was taken, and he accordingly deposed about this fact.

PW-107, Sapinder Singh @ Pappu, who was the owner-cum-driver of Truck bearing registration No. PB-12-A-7947, deposed that he knows accused Shamsheer Singh @ Shera being related to him but he failed to deposed anything further against the accused despite the fact that he was the witness, who took his Truck, on the asking of accused Shamsheer Singh, towards Ajnala side along with accused Jagtar Singh Hawara and brought two bags of RDX. However, when he was cross examined by the Public Prosecutor, he admitted that on 15.11.1995, he made statement before the Metropolitan Magistrate, Delhi, Ex.PW107/1 voluntarily and without any threat and he admitted that this statement was read over and explained to him and he signed the same but he alleged that he had made this statement under the pressure of the Police.

PW-108, Paramjit Singh was the

Metropolitan Magistrate, Tis Hazari Court, Delhi in the month of November, 1995 and he deposed that on the request of the CBI, he recorded the statement of Sapinder Singh @ Pappu, Ex.PW107/1 after satisfying himself that the witness is making the statement without any duress, threat or pressure and he recorded the same thereafter.

PW-109, Inderjeet Singh, who is a Granthi, although failed to support the prosecution but when he was declared hostile and cross examined by the Public Prosecutor, he admitted that once he went to Karol Bagh, Delhi where accused Paramjit Singh, who is being tried separately, met him there and thereafter he stayed in the house of sister of accused Paramjit Singh. He further admitted that at Delhi, at one point of time he, accused Paramjit Singh and Jagtar Singh Tara, who was identified by him in the court, travelled together and went to the house of one sikh gentleman and demanded a sum of Rs.2 lakhs from that person.

PW-110, Manohar Singh failed to support the prosecution and was declared

hostile.

PW-111, Mohan Pal, resident of Village Rasoli, Tehsil Rajgarh deposed that in May, 1995 one Surinder @ Chhinda came to his village along with three youngmen, Dilawar Singh, Maulla and Tari, with a proposal to take an apple orchard on lease and he accordingly took them to Village Orchard's but they could not succeed in getting any one and he also identified the photographs of accused Dilawar Singh and Lakhwinder Singh and also identified accused Balwant Singh.

PW-112, Chunni Lal Wali was the Superintendent, Custom Department Chandigarh, in the year 1995, and deposed that the specimen signatures and hand writing of accused Lakhwinder Singh was taken in his presence.

PW-113, Surinder Kumar, who was friend of PW Mohan Pal, deposed that he along with Tari, Maulla & Dilawar visited the Village of PW-111, Mohan Pal, to take some orchard on lease. He also deposed that accused Lakhwinder Singh was also with them at that time and he also identified the photographs of Dilawar

Singh and Lakhwinder Singh. He further deposed that after the assassination of Beant Singh, Dalbir Singh @ Maulla and Lakhwinder Singh met him on the 3rd day and all of them consumed liquor in the room of accused Lakhwinder Singh and he also identified the photographs of Dilawar Singh.

PW-114, Dalbir Singh @ Maulla, who was friend of Madanjit Singh Chhina, Surinder Singh Chhina and accused Lakhwinder Singh, while identifying the accused Lakhwinder Singh in the court, deposed that he also knows the friend of accused Lakhwinder Singh named Balwant, Dilawar and Lakhwinder Singh, who was having one Scooter bearing registration No. PCP-2085, Ex.P80. He further deposed that he visited the Village of Mohan Pal along with these accused persons. He further deposed that on 30.8.1995, on the request of Dilawar Singh, he took accused Balwant Singh to the shop of Surinder painter on the Scooter of Lakhwinder Singh, where Dilawar Singh was already present and Balwant Singh took out a pant from the Scooter and handed over the same to Dilawar Singh and he also noticed the Ambassador Car bearing registration No.

DBA-9598.

He further deposed that on 31.8.1995, accused Balwant Singh again met him at the dhaba at 12.00 noon and he was accompanied by one more person and later on in the evening, he heard the blast and when returned to his shop, Lakhwinder Singh met him there being perplexed and then in the evening he (Lakhwinder) disclosed that Beant Singh has been killed in bomb blast and he with help of accused Dilawar Singh, Balwant Singh and Jagtar Singh Hawara caused this blast. He further deposed that on the next date of the blast he saw the photographs of the car in the news paper and found that it was the same car which was taken by Balwant Singh & Dilawar Singh.

PW-115, S.S.Basoya, Junior Scientific Officer, is Finger Print Expert and he deposed that on 7.10.1995 and 12.10.1995, he took the finger prints of accused Lakhwinder Singh on the sheets, Ex.PW115/1 to Ex.PW115/15 and he also identified the photographs of Lakhwinder Singh, Ex.PW111/3 and mark-00000.

PW-116, Anil Kumar, who is a Tailor Master and running a tailor shop in Village Kansal, deposed that he knows accused Lakhwinder Singh @ Lakha being resident of Village Kansal and being a constable in Punjab Police. He further deposed that accused Lakhwinder Singh came to his shop with a pant and requested him to loose waist of the pant to its maximum in the presence of Maulla and he handed over the pant after doing the needful.

PW-117, Gian Singh, failed to support the prosecution and was declared hostile.

PW-118, Kishan Chand was running a dhaba in the name and style of Annapurna Dhaba and deposed that accused Lakhwinder Singh and PW Dalbir Singh @ Maula were known to him and on 31.8.1995 before the bomb blast, he saw two Sikh persons on Scooter with Dalbir Singh @ Maulla but he could not identify them.

PW-119, Dr.Gopalji Mishra, who was posted as Director, Forensic Science Laboratory, Punjab, Chandigarh at the time of this bomb blast, deposed that on

the request of the SSP Crime, Chandigarh he reached at the spot to find out the manner and the nature of the blast, and he accordingly took about 70-75 photographs of the place of occurrence and on the next morning of 1.9.1995, he again took some more photographs and ultimately on 2.9.1995, he went to the mortuary and took the photographs of the skull and two legs and he accordingly after developing and printing the photographs, handed over the same to the CBI and he identified all the photographs, Ex.PW119/1 to Ex.PW119/94. He also brought the negatives of the photographs in the court and proved the photographs accordingly.

PW-120, P.C.Thakur deposed that on 19.9.1995 accused Jagtar Singh Tara gave specimen hand writing and signatures in his presence.

PW-121, Anil Bhatia, resident of Ghaziabad, deposed that he spotted accused Jagtar Singh Hawara in his neighboring house of Ram Singh and accused Jagtar Singh Hawara also suffered two disclosure statements before him, Ex.PW121/1 and Ex.PW121/2 on 23.1.1996

and he took the police party to H.No.A-341-A Nand Gram Ghaziabad and got recovered the map prepared by him, Ex.PW121/3, and same was taken into possession as per memo, Ex.PW121/4 and thereafter accused Jagtar Singh Hawara took them to the STD Booths located at Meerut road and identified the same in his presence.

PW-122, Bhupinder Singh, again resident of Ghaziabad deposed that he identifies the photographs of Ram Singh @ Kuldip, who had purchased a house bearing No.341-A at his instance. He further deposed that accused Jagtar Singh Hawara used to visit the house of Ram Singh and he identified him and accused suffered two disclosure statements, Ex.PW121/1 and Ex.PW121/2 in his presence and thereafter got recovered a map from the house of Ram Singh, Ex.PW121/3 and same was taken into possession vide memo, Ex.PW121/4 and thereafter accused Jagtar Singh Hawara also identified the STD booths at Meerut road and he also identified the accused Jagtar Singh Hawara in the court.

PW-123, Harbinder Singh, who is relative of Manjinder Singh, residing in

U.K, deposed that he handed over letters written by Manjinder Singh to him, to the C.B.I, Ex.PW123/2, Ex.PW123/5, Ex.PW123/6 and also identified the photographs of Manjinder Singh.

PW-124, Jasbir Singh, Supervisor of the Gurdwara Sheesh Ganj, Delhi, deposed that he was working as a Clerk and he proved the entry made by the visitors in the register maintained for the stay of devotees in the Gurdwara and proved the record of the same.

PW-125, Dalbir Singh, who was working as Sewadar in the Gurdwara, Sheesh-Ganj also proved the entry made in the visitors register regarding room no.37, Ex.PW124/A which was allotted to Manjinder Singh, Paramjit Singh and Ujjagar Singh on 19.06.1995.

PW-126, Munish Chadha, Manager in Surya Hotel, brought the visitors register of his Hotel, which was taken into possession by the C.B.I and he deposed that Sandeep Sharma and Jaskaran Singh stayed in the Hotel from 23.11.1995 to 25.11.1995 in room no.206 as per entry made at serial no.93 of the

visitors register, copy of which is Ex.PW95/30 and Ex.PW95/31.

PW-127, Balbir Singh, who was friend of Harbir Singh Bhullar settled in Canada, deposed that Harbir Singh Bhullar used to send money to one Hundal and they know this fact as Harbir Singh Bhullar used to inform this fact to them on their telephone to further inform to Hundal.

PW-128, Joginder Singh, who was driver of a IAS Officer and on 31.8.1995, he was on duty and present near V.I.P gate, deposed that the bomb blast took place in which the deceased CM died.

PW-129, Upkar Singh also deposed about the blast which he heard while sitting in the office of the DIG Crime.

PW-130, Rajesh Malhotra, who was running a STD booth in Nandgram deposed that accused Jagtar Singh Hawara identified his STD booth at his own and he signed memo, Ex.PW121/4, prepared by the CBI in this regard in the presence of some other witnesses and he also identified the accused Jagtar Singh

Hawara in the court and his photographs and disclosed that he used to make international calls to Germany from his STD booth.

PW-131, Anoop Singh, who was working as Manager of Nanda Guest House, Panipat, deposed that one Sandeep Sharma stayed in their Guest House as per entry dated 13.9.1995 and proved the entries made in the visitors register by that person, Ex.PW131/2.

PW-132, Vinod Kumar Vats, Manager in the Surya Guest House, Delhi also brought the visitors register of the Guest House, Ex.PW123/7 and deposed that as per entry made at serial no.236 dt.23.6.1995, one Manjinder Singh stayed in their guest house from 23.6.1995 along with another Sikh young man and during the stay, one more person joined them and deposed that he identifies the photograph of sikh person and further identified the accused Balwant Singh and Jagtar Singh Hawara, who came to meet Manjinder Singh in their Guest House and he also identified the photographs of Manjinder Singh.

PW-133, Dinesh Chand, a STD booth owner of Ghaziabad, deposed that on 23.1.1996, accused Jagtar Singh Hawara identified his STD booth as per memo, Ex.PW121/5 and also identified him in the court.

PW-134, Murli Dhar, again a PCO owner of Farukhabad, deposed that one Tony was known to him and he used to make International calls from his STD booth to Germany and Norway.

PW-135, Manish Pal deposed that on the asking of one Ashok Kumar, resident of Fatehgarh, he arranged the house of one Mr.Gupta on rent for said Ashok Kumar and he also visited said Ashok Kumar in the Hotel, where two persons, one Pardeep Kumar and one unknown was present, and later on he identified that third person from the photograph, Ex.PW135/1 and came to know that his name is Jagtar Singh Hawara and the other person, who represented himself as Pardeep Kumar, was actually Balwant Singh, whose photo, graph he identified as Ex.PW95/18.

PW-136, Sanjay Kumar, who was

also having a P.C.O in the Awas Vikas Colony, Farukhabad, deposed that as per the PCO register, Ex.PW136/1 which he handed over to the C.B.I, some ISD calls were made to Norway on 3.12.1995 and he deposed as per those entries.

PW-137, Radhey Sham, who is the owner of the Hotel Anant Railway Road, Farukhabad, deposed that as per the visitors register of the Hotel, Ex.PW95/94, as per the entries, one person giving his name as Ashok Kumar, stayed in his Hotel in the month of October, 1995 on three different dates as per the entries made in the register and 2-3 persons also visited him. He identified accused Balwant Singh as one of those persons, who stayed with that Ashok Kumar but failed to identify the other one.

PW-138, Harish Kumar, who was working as Receptionist at Hotel President, Nagpur deposed that as per the visitors register, Ex.PW94/3, one Sandeep Sharma checked in their Hotel on 3.9.1995 at about 3.20 p.m, and checked out on 5.9.1995 and made the entires, Ex.PW94/1 in this regard and two other persons also

came with him at that time and he identified Balwant Singh as the person, who stayed there in the name of Sandeep Sharma.

PW-139, Don Basco Joseph, a Receptionist of Hotel President, Nagpur deposed that as per the register, Ex.PW94/3, accused Balwant Singh stayed in their Hotel in the name of Sandeep Sharma as per the entry, Ex.PW94/1 and he also identified accused Balwant Singh in the Court.

PW-140, Radhey Parkunta, who was working as Watchman in Mudra Complex, Nagpur, deposed that for some times, he worked at the PCO and as per the entries in the PCO register, Ex.PW140/1 on 4.9.1995, some calls were made and he handed over those records to the police.

PW-141, C.Varinder Rana, who was at duty on 31.8.1995 at the Civil Secretariat at VIP Gate, deposed about the bomb blast and stated that he also suffered injuries in this blast.

PW-142, Kulwant Singh, who was working as driver with J.S.Maini, then

Principal Secretary and who was on duty with Mr.Maini on 31.8.1995, also deposed about the bomb blast.

PW-143, C.Bakshish Singh, who was on duty on the VIP gate of the Punjab Civil Secretariat, deposed about the bomb blast and the killing of Beant Singh and also deposed that he also suffered injuries.

PW-144, D.P.Sehrawat, who was working as an Assistant in the office of Director General of Health Services at Nirman Bhawan , New Delhi, was the person in whose presence accused Jagtar Singh Hawara has given his specimen hand writing and signatures, Ex.PW144/1 to Ex.PW144/17 and he deposed that he attested the sheets accordingly.

PW-145, Gurbax Singh was the brother of the deceased Dhanwant Singh and he deposed about the identification of the dead body of his brother during the inquest proceedings and also deposed that his brother died because of the bomb blast at the Civil Secretariat.

PW-146, Sudarshan Singh

identified the dead body of HC Ajaib Singh and deposed accordingly.

PW-147, Kamal Kishore, who was related to deceased Lachman Dass, deposed that he identified the dead body of deceased Lachman Dass, who died in this bomb blast.

PW-148, Kaku Singh, a Gate Keeper of the Secretariat, identified the dead body of Tota Ram, who died in the bomb blast.

PW-149, Dr.Sachin Bassi, identified the dead body of Dr.Anil Duggal, who died in the bomb blast.

PW-150, Sanjiv Kumar identified the dead body of Yash Pal Bali, who died in the bomb blast, and deposed accordingly.

PW-151, Manjit Singh identified the dead body of Ranjot Singh, who was his father, who died in the bomb blast and deposed accordingly.

PW-152, Bhupinder Singh identified the dead body of Jagdish

Singh, who was his younger brother, who died in Bomb blast and deposed accordingly.

PW-153, Hardev Singh identified the dead body of Chamkaur Singh, who was related to him and who died in bomb blast and deposed accordingly.

PW-154, Baldev Singh was related to deceased Jagdish Singh, who died in Bomb Blast and identified his dead body and deposed accordingly.

PW-155, Amarjit Singh identified the dead body of his brother Swaran Singh, who died in bomb blast and deposed accordingly.

PW-156, Sukhwinder Singh identified the dead body of his father Mukhtiar Singh, who died in bomb blast and deposed accordingly.

PW-157, Surinder Singh deposed that Dr.Anil Duggal and Dr.Rajnish Sood were on duty with the Chief Minister, Punjab in the capacity of Medical Officers and on 31.8.1995, Dr.Duggal died because of bomb blast.

PW-158, Kamaljit Singh identified the dead body of MLA, Baldev Singh, who was known to him, who died in Bomb blast and deposed accordingly.

PW-159, Gurbachan Singh, who was posted as Constable at Chandigarh deposed that he was known to Lakhwinder Singh.

PW-160, R.S.Verma, Director, Central Forensic Science Lab, Chandigarh, who is a expert of explosive deposed that on 8.9.1995, he was called by the C.B.I for collecting the remanents and the explosive substance from the room of accused Gurmeet Singh, in house no.981, Phase-IV Mohali and accordingly as per the identity disclosed by Gurmeet Singh, he recovered some particles from the room and examined and found the same to be part of the RDX. Thereafter, he converted those particles in a sample for examination in the Laboratory and as per his report, Ex.PW160/1, he found that all the articles recovered from the room, Article-Ex.P-82 to Article-Ex.P-90, were having the traces of RDX.

PW-161, Dr.Vijay Kumar, who was

also attached with Chief Minister as a Medical Officer, deposed about the identification of the dead body of Dr.Duggal.

PW-162, C.Sukhwinder Pal Singh, who was on duty in the security of the Chief Minister, deposed that on 31.8.1995 he was present at the residence of Beant Singh being a spare driver and at about 5.10 p.m., he received a wireless message about the bomb blast and reached Secretariat and found that Beant Singh had died along with some other persons. He also deposed that accused Lakhwinder Singh, who was working as Constable driver, was known to him and he was clean shaven in those days and he identified him in the court. He also identified the photograph of deceased Dilawar Singh and deposed that accused Lakhwinder Singh once introduced Dilawar Singh with him and as such he identifies both of them.

PW-163, Raj Mohan deposed that on 5.9.1995, the police searched the room of accused Lakhwinder Singh in his presence and all the articles recovered from there were taken into possession vide memo, Ex.PW163/3.

PW-164, P.C.Sharma, then CBI Inspector deposed that as directed by the IO, he conducted the search of the room of accused Lakhwinder Singh in the presence of PW-163 and taken into possession all the articles as per memo, Ex.PW163/3.

PW-165, Roop Singh, a Ballistics Expert of CFSL, Chandigarh deposed that on the asking of the C.B.I, he examined the scene of occurrence of the blast on 1.9.1995 till 3.9.1995 and took into possession number of articles from the spot with the purpose to examine them for the cause of the blast and the modus operandi and after examining those articles in the different Laboratories, he found that this bomb blast took place with the help of improvised explosive device commonly known as IED which exploded near the rear left side of the car of the Chief Minister, bearing registration No. PB-08-3469, at height of three feet from the ground and keeping in view the recovery of two legs and skull, he confirmed that this explosion has been caused by a human bomb and the RDX has been used for the explosion.

He also examined the RDX recovered from the possession of accused Nasib Singh and reported that after examination from the Chemical and Instrumental analysis, the presence of RDX based high explosive in the contents has been confirmed and the RDX based high explosive is also detected in all the 27 articles recovered from the spot.

He further deposed that on 11.10.1995, he examined a belt, Ex.P97, and found that 2 kg of RDX based high explosive can be filled in the Ex.P97. Similarly he also examined a battery, Ex.P153 in Ballistic Division and Physics Division and found that such type of battery could have been used in causing the explosion on 31.8.1995 and he also confirmed the presence of RDX on the news paper piece, Ex.P88 which was recovered from the room of accused Gurmeet Singh, and which was used for the preparation of the RDX filled in the belt used by deceased Dilawar Singh.

PW-166, Tilak Raj Mehra, a document expert of the CFSL, New Delhi compared the questioned and standard writing attributed to accused Lakhwinder Singh, Gurmeet Singh, Balwant Singh,

Jagtar Singh Tara and Navjot Singh and concluded that all the questioned writing and signatures were all of these accused persons on all the questioned documents and he deposed about his conclusion in all the cases as per his reports Ex.PW166/1 to Ex.PW166/26 and justified his conclusion in this regard.

PW-167, Dr.Rajinder Singh, Senior Scientific Officer, CFSL was a member of the team of the CFSL authorities, who examined the scene of crime from 1.9.1995 to 3.9.1995 and deposed about the recovery of the incriminating articles from the spot.

PW-168, Kewal Singh is a formal witness, who took into possession the medico legal reports of the injured persons and then handed over the same to the C.B.I.

PW-169, Sat Pal Singh, was also associated with DSP of the CBI in the investigations and he accordingly deposed about the part played by him in the investigations.

PW-170, H.R.Chopra, then DSP,

CBI also deposed as to the part of investigations conducted by him but which are of formal nature.

PW-171, SI Om Parkash was the person, who conducted the inquest proceedings of some of the dead bodies and he accordingly proved those proceedings.

PW-172, C.Amarjit Singh was associated during the postmortem proceedings of deceased Mukhtiar Singh and he accordingly deposed about those proceedings.

PW-173, SI Baljit Singh was associated in the postmortem proceedings of deceased Swaran Singh and deposed accordingly.

PW-174, SI Tarlok Singh conducted the inquest and postmortem proceedings relating to the dead body of Ranjot Singh and proved the same accordingly.

PW-175, SI Harbhajan Singh prepared the inquest proceedings relating to the dead bodies of Yash Pal Bali, ASI

Jagjit Singh, Chamkaur Singh, Lachman Dass, Rajinder Parsad and also deposed about the postmortem of these dead bodies.

PW-176, SI Gamdoor Singh took the dead bodies of deceased Kultar Singh to the Hospital for the postmortem examination. He also obtained the permission of the SDM for the postmortem of dead body of deceased Beant Singh and the postmortem of two legs and skull recovered from the spot and deposed accordingly.

PW-177, SI Sukhdev Singh was associated during the inquest proceedings of deceased Mukhtiar Singh, Rajinder Parsad, Balbir Singh and proved those proceedings.

PW-178, S.K.Chadha, Senior Scientific Officer, CFSL, New Delhi was also one of the member of the team, who examined the scene of crime and being a Finger Print Expert, he took the chance finger prints from the car bearing registration No. DBA-9598, as per the memo, Ex.P178/1, along with the photographs and after examining those

prints in the laboratory and after comparing the same with the specimen finger prints of accused Gurmeet Singh, Lakhwinder Singh, Jagtar Singh Hawara and Balwant Singh, as per his report, Ex.PW-178/5 and Ex.PW-178/14, found that two chance finger prints lifted from the car marked Q-4 and Q-15 matches with the specimen finger prints of accused Lakhwinder Singh and Balwant Singh respectively and deposed accordingly.

PW-179, SI Ved Parkash conducted the inquest proceedings relating to dead bodies of deceased Lachman Singh, Rajinder Parsad, Chamkaur Singh, Tota Ram, Hardial Singh, Ajaib Singh, Jagdish, Beant Singh, Kultar Singh and Balbir Singh and he accordingly deposed about these proceedings. He also deposed about the various incriminating articles recovered from the spot.

PW-180, Jasbir Singh, who was running a taxi, deposed that on 31.8.1995 accused Balwant Singh took his Jeep Taxi from Bus Stand Sangrur for going to a Village near Rampura Phool and he accordingly took him and he got down from the jeep near Gurudwara of the Village.

He also deposed that he has identified the photo graph of Balwant Singh before the CBI, Ex.DRRRR, and also identified him in the court.

PW-181 Goldi Gupta deposed that in the year 1996, the visitors guest register of the guest house was taken into possession by the CBI as per memo, Ex.PW131/4 and he also identified the register, as Ex.PW123/7.

PW-182, Constable Surinder Kumar deposed that he took the dead body of Dhanwant Singh for postmortem and after doing the needful, he handed over the documents to SI Om Parkash deposed that

PW-183, HC Anil Kumar deposed that he accompanied PW Nanha Ram to PGI, where after recording the statement of Pala Ram Ex.PW30/3, he took the same to the police Station, where formal FIR, Ex.PW30/4, was registered.

PW-183-A, HC Anil Kumar proved the entries of DDR No.30, 34, 39 dated 9.9.1995 and proved the copies there of.

PW-184, Amarjit Kaur, owner of

house no.243 Phase-7 Mohali, deposed that she gave his one room on rent to one Jagroop Singh, who was residing there with his brother Gurdip, but she failed to depose that accused Navjot Singh used to visit Jagroop Singh and thus she was declared hostile.

PW-185, Mewa Singh, who was running a tea shop near the MT Section of Civil Secretariat, deposed that he was knowing accused Lakhwinder Singh @ Lakha being a driver of MT Section. He further deposed that accused Lakhwinder Singh was residing in rented accommodation in village Kansal near Shiv Temple and he was having scooter bearing No. PCP-2085. He further deposed that he met Dalbir @ Maulla and deceased Dilawar Singh with Lakhwinder Singh and on 30.8.1995, Lakhwinder Singh along with Dilawar Singh and two other persons visited his shop and he accordingly identified photographs of Dilawar Singh, Ex.PSSSS and signed the same. He also identified the photograph of Lakhwinder Singh, Ex.PW111/3. However, this witness could not identify accused Lakhwinder Singh saying that he was clean shaven at that time. He also deposed that even on 31.8.1995, accused Lakhwinder

Singh, visited his shop along with some person whose photograph is Ex.PW185/A.

PW-186, Paramjit Singh, who is residing in Ghaziabad in Mohalla Ramgarh has failed to depose in favour of the prosecution and was declared hostile.

PW-187, Ramesh Chand, who was working as Assistant Manager in Hotel Laxmi Palace Jaipur, deposed that as per the Guest register, Ex.PW187/1, at serial no.91 dated 7.11.1995, one Jaskaran Singh son of Ram Singh and Rajiv Kumar resident of Panipat checked in the Hotel on 7.11.1995 and left at 8.00 a.m on 8.11.1995 and proved the entries made by Rajiv Kumar as Ex.PW87/1-A, which was taken into possession by the police as per memo, Ex.PW187/2 and he handed over this record to the Police.

PW-188, Babu Lal, proprietor of Ganpati Guest House, Jaipur deposed that as per the guest register, Ex.PW188/1, vide entry dated 14.9.1995, one Ajmer Singh son of Santokh Singh arrived in the guest house at 7.40 a.m, accompanied by two male persons, one female and one child and they stayed in room no.6 up to

16.9.1995 and he handed over the entries to the CBI accordingly.

PW-189, HC Paramjit Singh has registered the formal FIR and proved the same.

PW-190, ASI Ranjit Singh, deposed that Car No. DBA-9598, article P-76 was lying in Police Station, North and on 1.9.1995, it was examined by Expert S.K.Chadha and Gautam Rai and they took the photograph and finger prints in his presence as per the memo, Ex.PW178/1, which bears his signatures.

PW-191, SI Neeraj Sarna of Crime Branch, Chandigarh deposed that he was present on 3.9.1995 at the scene of crime and the same was inspected by the CBI team along with expert team of the CFSL and some incriminating articles were lifted from the spot as per the memo, Ex.PW191/A, after converting the same into sealed parcels in the presence of Inspector P.K.Dhawan and DSP A.K.Ohri and he also identified those articles as article Ex.P-186 to Ex.P-189 in the Court.

PW-192, Jagdish Singh is the brother of accused Paramjit Singh, who is facing trial in a separate trial, but he has failed to support the story of the prosecution for which he was cited as a witness.

PW-193, Harmohinder Kaur, sister of accused Paramjit Singh mentioned above also failed to support the story of the prosecution for which she was cited as a prosecution witness.

PW-194, Babu Singh was the Head Gate Keeper of Punjab Civil Secretariat and he accordingly deposed about the bomb blast on 31.8.1995 and the death of Dhanwant Singh, another watchman in the blast.

PW-195, R.D.Kalia, DSP, CBI investigated the case at Jaipur and he had taken into possession the guest register of Ganpati Guest House from its proprietor Babu Lal Sharma as per memo, Ex.PW188/2. On 23.1.1996, he also took into possession the register, Ex.PW187/1 of Hotel Laxmi Palance, Jaipur through memo, Ex.PW187/2 from Ramesh Chand and deposed accordingly.

PW-196, Atma Ram, who was working as lift-man in the Civil Secretariat, also deposed about the bomb blast as heard by him.

PW-197, Ranjit Singh, Constable deposed that while posted at Chandigarh, he was knowing accused Lakhwinder Singh and his friend Dilawar Singh resident of Patiala. He further deposed that on his identification, accused Lakhwinder Singh opened his account with Punjab National Bank Chandigarh. He identified the signatures of Lakhwinder Singh on account opening form, Ex.PW59/J, as well as his own signatures and the photograph of Lakhwinder Singh, ExPW197/1, and further deposed that, at that time, accused Lakhwinder Singh was clean shaven. He also identified accused Lakhwinder Singh in the court and his photographs mark, YY/5 and mark D-SSSS.

PW-198, Sunil Kumar Sharma also remained associated in the investigation and deposed that on 18.9.1995, he recorded the statement of Harpreet Kaur and took into possession document, Ex.D150 from PW Dilbagh Singh and also

obtained his signatures on the back of the poster, Ex.PW150/1. He also deposed that on 14.1.1996, he took into possession the PCO register of STD booth Farukhabad, Ex.PW198/1 through memo, EX.PW198/2 in the presence of Vinod Kumar Khurana and on the same day, he took into possession another PCO register of Anu PCO, Farukhabad, Ex.PW136/1 vide memo, Ex.PW136/2 from Sanjay Kumar and he also recorded the statement of Dashrath Parsad Tiwari, who identified the photograph of Balwant Singh. He also deposed that on 15.1.96, he took into possession the guest register of Hotel Anand, Ex.PW94/44 vide memo, Ex.PW137/1 from Radhey Sham and thereafter he took into possession the STD register, Ex.PW134/2 of Murli STD vide memo, Ex.PW134/1 in the presence of Murli Dhar, owner who also identified the photograph of Jagtar Singh Hawara, Ex.PW134/3 and signed the same.

PW-199, Darshan Singh, who was working as driver with the S.P. Security at the relevant time, deposed that he was knowing accused Lakhwinder Singh, who was also working in Police deptt and residing in Village Kansal and he was clean shaven at that time. He also deposed that

Lakhwinder Singh purchased a scooter and some person used to visit him and he identify the photographs of Dilawar Singh, Ex.PSSSS and also identified accused Lakhwinder Singh in the court.

PW-200, HC Hakam Singh deposed that on 31.8.1995, he was on duty at Civil Secretariat at VIP gate along with other officials, and he proved their duties as such.

PW-201, S.V. Singh deposed that on 22.1.1996, on the asking of CBI, he was associated in the investigation and accused Jagtar Singh Hawara suffered disclosure statements, Ex.PW201/1 and Ex.PW201/2, and accused Balwant Singh also suffered a disclosure statement, Ex.PW201/3 in his presence and in the presence of one Than Singh and thereafter accused Jagtar Singh Hawara took the police party to Daryaganj and identified Surya Guest house vide memo, Ex.PW201/4 in his presence. He also deposed that thereafter accused Balwant Singh also identified the same place vide memo, Ex.PW201/5 and then accused Jagtar Singh Hawara took the police party to PCO located at Bhagat Singh market and

identified the same as per memo, Ex.PW201/6 and all these documents were signed by the accused persons and the witnesses in his presence. He also identified both accused Jagtar Singh Hawara and Balwant Singh in the court.

PW-202, Dhana Ram was on duty at the Secretariat on the date of blast, and deposed about the deployment of the security personnel at the VIP gate.

PW-203, Gurdial Singh, who was the line officer, Security in the Civil Secretariat also deposed about the deployment of security staff.

PW-204, Parkash Gobind Ji Trivedi, who was a partner of Hotel Anand Mehal, Nagpur, deposed that as per the guest register, Ex.PW95/3, as per entires, Ex.PW95/1, one Sandeep Kumar Sharma stayed in his Hotel along with Tejinder Singh and this record was taken into possession by the C.B.I on 5.1.1996 vide memo, Ex.PW204/A in his presence along with the bill book, Ex.PW204/2 containing carbon copy of bill dt.5.9.1995.

PW-205, Suresh Goel Trivedi, another partner of Anand Mehal Hotel also deposed about the stay of Sandeep Sharma from 5.9.1995 to 6.9.1995 as deposed by PW-204.

PW-206, Dineshwar Trimbakrao Deshmukh deposed that as per the withdrawal form, Ex.PW206/2 and Ex.PW206/3, on 5.9.1995 a sum of Rs.25,000/- was withdrawn by Gurinder Singh, Account holder from his account and he handed over the record to the CBI.

PW-207, Harcharan Singh, a co-villager of accused Wadhawa Singh (Since proclaimed offender) deposed that accused Wadhawa Singh was also the member of the society of the Village and he accordingly identify his signatures on the fax message, mark AAA, as Ex.PW207/1 and similarly he also identified his signatures on the fax messages, mark AAA/1, mark DDD, mark-DDD/1, mark EEE, mark EEE/1, mark FFF , mark FFF/1.

PW-208, Harpreet Singh alleged that he knows one Jodh Singh, who was also under trial with him in Tihar Jail Delhi but he failed to depose that said

Jodh Singh introduced him to Jagtar Singh Hawara and thereafter he was declared hostile to the prosecution.

PW-209, Tara Singh, who was the Sarpanch of Village Dasuwal and a co-villager of accused Mehal Singh (Since proclaimed offender) identified the signatures of Mehal Singh on the fax messages, mark AAA, mark AAA/1, mark DDD and mark DDD/1.

PW-210, Ajay Gupta, owner of the Parbhat Hotel, Agra deposited that as per the guest register, Ex.PW95/35, on 6.11.1995, one Rajiv Kumar resident of Panipat stayed in his Hotel and made entry, Ex.PW95/36 with his signatures, Ex.PW95/37 and stayed till the morning of 7.11.1995 and thereafter on 8.11.1995, he again checked in along with another person vide entry, Ex.PW95/38 with signatures, Ex.PW95/39 and stayed upto 9.11.1995. He further deposed that on 9.11.1995, one Gurpreet Singh also took a room and stayed in the Hotel along with one Gentleman as per the entry, Ex.PW95/40 with signatures, Ex.PW95/41 and they left the Hotel at about 1.30 p.m. He also deposed that vide entry

dated 15.11.1995, Ex.PW95/42 with signatures of Rajiv Kumar, Ex.PW95/43, same Rajiv Kumar along with one Jaskaran Singh again stayed in his Hotel from 16.11.1995 and all the record was taken into possession by the CBI vide memo, Ex.PW210/1. He also identified the photograph of Rajiv Kumar as mark TTTT and his signatures on the same, Ex.PW210/2.

PW-211, Narinder Singh Rana handed over the registration record of the vehicles no.DBA-9598 and no. DL-3C-E 2104 to the CBI as per the memo Ex.PW211/1 and deposed that Ambassador Car no. DBA-9598 was owned by Mrs. Reva Dutta w/o S.K.Dutta of Pachim Bihar, New Delhi.

PW-212, Balwant Singh deposed that on 20.1.1996, accused Balwant Singh suffered disclosure statements, Ex.PW-247/3 and Ex.PW-247/4 and he & Goldu signed the same and thereafter accused Balwant Singh took the police party to the Mall Road at Patiala and disclosed the place from where he hired a taxi for Mohali and pointing out memo, Ex.PW-212/1 was prepared with the signatures of

accused Balwant Singh. Thereafter accused Balwant Singh led the police party in Tripuri Market, Patiala and identified the shop of tailor from where he got the clothes stitched and pointing out memo, Ex.PW76/2 was prepared in the presence of Amarjit Singh, Tailor Master and the measurement book of tailor was also taken into possession. Thereafter accused Balwant Singh took the police party to the Kabari Bazar and identified the shop of kabari, from where the iron balls were procured and pointing out memo, Ex.PW-212/2 was prepared in his presence. He also deposed that then accused Balwant Singh took the police party to the Dharampura Bazar, Patiala and pointed out the shop from where he procured Battery and electric switch and pointing out memo, Ex.PW-212/3 was prepared. After this accused took the police party to A.C. Market, Patiala, from where he got the belt stitched and pointing out memo, Ex.PW75/B was prepared.

PW-213, Karamjit Singh, a co-resident of accused Gurmeet Singh, Lakhwinder Singh, Dilawar Singh and Balwant Singh identified all these accused persons and deposed about their

antecedents and deposed that for the last time, he met Dilawar Singh on 15.8.1995, when he took liquor with him and under the influence of liquor Dilawar Singh disclosed that he is going to do a big incident and he identified the photographs of accused Dilawar Singh and also identified accused Gurmeet Singh, Balwant Singh and Lakhwinder Singh.

PW-214, Santokh Singh, resident of Guru Nanak Nagar, Patiala identified deceased Dilawar Singh and Gurmeet Singh being residents of his locality.

PW-215, Avinder Vir Singh proved the copies of the FIR No.12 dated 2.2.1991 and FIR No.39 dated 26.3.1991, Ex.PW215/1 and Ex.PW215/2.

PW-216, Charanjiv Singh deposed that on 20.9.1995, accused Jagtar Singh Tara suffered a disclosure statement, Ex.PW216/1 in his presence and in the presence of Mr.Anil Anand and he signed the same in his presence and thereafter he took the police party to the Sahirdaye Apartments, Pachim Vihar, New Delhi and identified the house of S.K.Dutta, who came out of the house and a pointing out

memo, Ex.PW32/8 was prepared in his presence and S.K.Dutta was joined in the investigation. He also identified accused Jagtar Singh Tara in the court.

PW-217, Harjit Singh @ Raja, an electrician by profession, deposed that he knows Jarnail Singh @ Joga, who was running his business of Electric Works and he used to work with them and accused Paramjit is the brother of Jarnail Singh. He further deposed that in the month of September, 1995, he met accused Paramjit in their factory and Paramjit expressed an apprehension, he may be arrested by the Punjab Police on account of death of Sardar Beant Singh. He further deposed that on 22.9.1995, the CBI took into possession Scooter, Ex.P70 in his presence along with its documents vide memo, Ex.PW33/1.

PW-218, Harkesh Singh, NSG Commando, who was working as Ranger-I in the Escort of the deceased Chief Minister, deposed that on 31.8.1995, on receiving the message that the CM is going out, he took up his position and at about 5.05 p.m, Shri Beant Singh CM Punjab, came into the porch and he was

facing towards the CM and when the CM was talking to Dr.Duggal and was going to sit in the Car, he saw one person in police uniform coming towards the CM and thereafter a blast took place resulting into the death of CM & other persons. He deposed that the person, who came towards the CM was a young person and was not wearing turban or a cap.

PW-219, HC Nahar Singh handed over the service file of Dilawar Singh to the Police, Ex.PW161/A as per memo, Ex.PW219/1 and also identified the photograph of deceased Dilawar Singh, his date of birth and his matriculation certificate and signature of Dilawar Singh on the service book.

PW-220, Anwar Khan, a Receptionist of City Lodge, Calcutta deposed that as per the guest register, Ex.PW220/1, as per the entry at page 80, one Santokh Singh son of Arjun Singh along with five other persons stayed in their Guest House, vide entry Ex.PW-220/2.

PW-221, Mumtaz Khan, who was working as Manager of the New City

Lodge, Calcutta at the relevant time corroborated the testimony of PW-220 and reiterated the facts stated by PW-220.

PW-222, Himmat Singh @ Bhai Mistri, a neighbour of Jagjit Singh deposed that he knows Jagjit Singh, who stayed in H.No. B-50 Vishavkarma Park, Laxmi Nagar, Delhi being a neighbourer for the last 15-18 years but he stated that he does not know Paramjit Singh and thereafter he was declared hostile.

PW-223, Thakur Dass, Manager in Kohinoor Hotel, Agra deposed that as per the guest register, Ex.PW223/3, as per entry, Ex.PW223/1, vide entry no.3837 dated 19.12.1995, two persons Gaurav Chawla and Surinder Bansal stayed in their Hotel from 19.12.1995 to 22.12.1995 and as per the bill, copy of which is Ex.PW223/2, they charged room rent. He further deposed that he handed over the record to the CBI and also identified the photographs of the person, who stayed in the Hotel, vide photographs, Ex.PW-223/4 and Ex.PW-223/4-A.

PW-224, Narain Rakshi, Manager of the Hotel Prabhat Chikitola, Agra,

deposed that he identified the photograph Ex.PW-224/1 and Mark WWWW of a person, who came to their Hotel to meet two persons, who also stayed in the Hotel.

PW-225, Pardeep Chand deposed that on 16.1.1996, the hand writing and signatures of accused Balwant Singh in English, Hindi and Punjabi were taken in his presence on the sheets, Ex.PW225/1 to Ex.PW225/23 and those were attested by him.

PW-226, Badruzzaman, who is Manager of Hotel Classic, Calcutta, deposed that as per the Hotel register, Ex.PW226/1 vide entry no.2571 dated 20.09.1995, Gurmeet Singh, Jaswant Singh, Gurjit Singh, Kirpal, Dinesh and one Kaur stayed in their Hotel in two rooms upto 30.9.1995 and the entries were made by the customer, which are Ex.PW226/3 and Ex.PW226/3-A and he handed over this record to the C.B.I vide memo, Ex.P226/2. He further deposed that on the asking of the CBI, he identified the photographs of the persons, who stayed in the Hotel as Ex.PW95/22, Mark VVVVV and Mark VVVVV/1 and put his signatures on the same but he failed to identify those persons in the

court.

The number PW-227 has been skipped inadvertently.

PW-228, Inspector P.K.Dhawan, who remained associated in the investigation of this case with the CBI, deposed that on 2.9.1995 the investigating team visited the place of occurrence along with the CFSL team and took into possession all the incriminating articles vide seizure memo, Ex.PW228/1, as per the detailed mentioned therein. He further deposed that similarly on 3.9.1995, the Investigating Team again collected incriminating articles, as per memos, Ex.PW191/A and Ex.PW191/B, as per the details mentioned therein, in his presence and he has also identified all those articles in the court.

PW-229, Ravi Gambhir, Inspector, CBI, who was also a member of the Investigating team, deposed that on 16.1.1996 he went to Calcutta and took into possession the records of Hotel Classic, Hotel New City Lodge and recorded the statements of concerned witnesses and got the identity of the

accused Balwant Singh from the Hotel staff and handed over the record to the Chief Investigating Officer.

PW-230, Girish Joshi, owner of Hotel Kiran, Agra, deposed that as per the Hotel register, two persons Gurdev Bansal & Surinder Bansal stayed in their Hotel from 22.12.1995 and 23.12.1995 as per the entry, Ex.PW-230/1 and the certificate, Ex.PW-230/2 and he issued the bill, copy of which is Ex.PW-230/A in this regard.

PW-231, Rajesh Kumar, Inspector, CBI, who was also member of investigating team deposed that on 11.12.1995, accused Shamsher Singh was arrested at Patiala in his presence. He further deposed that on 3.1.1996, he went to Nagpur and took into possession record of the Hotel President, Nagpur as per memo, Ex.PW39/1 and recorded the statement of the Hotel staff. Thereafter he went to Rajesh Telecom Centre, Nagpur and took into possession the computerised statement of calls and the call register, vide memo, Ex.PW231/1 and recorded the statement of the witnesses. He further deposed that Watchman Radhey identified the

photographs of Balwant Singh and signed the same and thereafter on 5.1.1996, he took into possession the records of Hotel Anand Mehal and also took into possession the record of the Anand Telephone Centre, Nagpur and recorded the statement of all these witnesses.

PW-232, Gurdeep Singh, SHO P.S Sadar, Kapurthala proved the History sheet record of Wadhawa Singh and the details of the cases in which he was involved.

PW-233, Jodh Singh, resident of Uttam Nagar, New Delhi deposed that he knows Jagtar Singh Hawara and Paramjit Singh, being the members of Akhand Kirtani Jatha and was declared hostile by the prosecution.

PW-234, S.L.Mukhi, Senior Scientific Officer, compared the disputed documents along with specimen writings and the signatures of the accused persons and proved his report in this regard.

PW-235, Sanjay Garg, who was posted as Metropolitan Magistrate, Tis Hazari Court at Delhi, deposed that on

the request of the CBI, he recorded the statement of witnesses Chamkaur Singh u/s 164 Cr.P.C, Ex.PW99/7 as per the procedure required under the law and sent the same to the concerned court.

PW-236, C.M Patel, a Serological expert examined the incriminating articles sent to the CFSL and gave his report, Ex.P236/2 in this regard.

PW-237, A.K.Ohri, SP, CBI who was member of the Investigating team deposed that on 1.9.1995, he started investigations of this case by recording the statement of the injured persons and on 3.9.1995, he took into possession the incriminating material in the presence of CFSL team as per the seizure memo, Ex.PW191/A and Ex.PW191/B and as per the details mentioned therein and handed over the same to the Chief Investigating Officer. He further deposed that on 5.9.1995 he conducted the search of the house of accused Gurmeet Singh at Patiala and recovered the Album containing photographs of Gurmeet Singh and Dilawar Singh as per memo, Ex.PW237/1 and identified those photographs. He further deposed that after that, he conducted the

search of house of accused Dilawar Singh in the same locality as per memo, Ex.PW85/1 and all the articles mentioned in the report, were taken into possession. Thereafter on 12.9.1995 he went to the Village of Foster father of accused Balwant Singh, namely, Jaswant Singh and conducted the search of his house in his presence as per memo, Ex.PW88/1 and took into possession all the articles and mentioned therein and recorded the statement of the witnesses and handed over the same to the Chief Investigating Officer.

PW-238, Inspector Vijay Kumar, who was also member of the Investigating Team of the Chandigarh Police deposed that on 4.9.1995, PW-51, Surinder Sharma made a statement relating to this case and thereafter another witness Balwinder Singh was called and his statement was recorded and both these witnesses identified car No. DBA-9598, Ex.P76 and disclosed that it is the same car which was painted by Surinder Sharma at the instance of accused Lakhwinder Singh. He further deposed that on 5.9.1995, he went to Village Kansal to locate Lakhwinder Singh and accordingly on the identity of

PW-51, Surinder Sharma and Balwinder Singh, accused Lakhwinder Singh was arrested along with scooter No. PCP-2085 and search memo was prepared and taken into possession as per the seizure memo, Ex.PW51/2 and the Scooter was also taken into possession vide separate seizure memo, Ex.PW51/1 in the presence of both the witnesses. After that, accused Lakhwinder Singh took the police party to the parking area in Sector 22-C, Chandigarh, where accused Balwant Singh was found standing and was accordingly arrested and all the incriminating articles were taken into possession vide seizure memo, Ex.PW51/4 in the presence of both the witnesses Surinder Sharma and Balwinder Singh and thereafter the custody of the accused persons was handed over to the CBI team. He further deposed that on 5.9.1995, the room of accused Lakhwinder Singh was searched in the presence of PW C.Gurbachan Singh by P.C.Sharma, CBI Inspector and 14 incriminating articles lying therein were taken into possession as per memo, ExPW163/3.

PW-239, A.G.L.Kaul, who was also member of the investigating team deposed

about the investigations carried out by him. As per this witness, on 18.01.1996, he visited Agra and took into possession the record of the Hotel Deepika, Hotel Prabhat and recorded the statements of the Hotel Staff and the Hotel Staff identified the photographs of some of the accused persons, who stayed in their Hotel including Balwant Singh. He further deposed that after the arrest of Balwant Singh, his specimen handwriting and signatures were taken in his presence on the sheets, Ex.PW225/1 to Ex.PW225/23 and on 22.1.1996, further specimen handwriting of the accused was obtained on sheets, Ex.PW106/1 to Ex.PW106/19. He further deposed about the details of the investigations carried out thereafter including the recovery of the identification of various places made by accused Balwant Singh from where he got the uniform and belt stitched, from where he purchased the 9 volt battery and switch and from where he purchased the balls which were used as a missiles in the belt bomb.

He further deposed that on 28.01.1996, he went to Surya Guest House, Daryaganj and took into possession the

records from the Hotel staff and recorded their statements. On 30.1.1996, similarly, he took into possession the records from a Hotel of Ambala City and recorded the statement of Hotel Staff and deposed about the investigations carried out by him in details.

PW-240, Inspector Nanha Ram was the first Investigating Officer of the Chandigarh Police, who conducted the investigations till the time it was taken over by the CBI.

Accordingly, he deposed that on 31.8.1995, after receiving information of bomb blast, he immediately reached at the spot and inspected the place of occurrence and immediately took all the remedial steps along with other police persons for sending the injured and dead bodies to the Hospitals and cordoned off the area of the bomb blast and conducted a detailed inspection. As per this witness, during the inspection, he found an Ambassador Car in the parking area towards Haryana Secretariat having registration No. DBA-9598, Ex.P76 and he found that the car was painted afresh as paint was not fully dried. Accordingly,

he suspected that the said car might have been used in the commission of crime and as such, he deputed a person to guard the car and found that all the three cars of the CM were badly damaged along with other police vehicles. Police photographer as well as Dr.Mishra of FSL Punjab also reached at the spot and they also inspected the spot and took the photographs, Ex.PW119/1 to Ex.PW119/71, showing as details of the place of occurrence and scene of crime.

After conducting the proceedings at the spot, he reached at P.G.I, Chandigarh and recorded the statement of C.Pala Ram, Ex.PW30/3, who deposed as to how the bomb blast took place. Thereafter, he again reached at the spot and conducted the search of car No. DBA-9598 and from the registration certificate mark WW, he came to know that the Car was registered in the name of Mrs.Reva Dutta and he accordingly took into possession the RC, Insurance Cover Note and slip containing writings in Punjabi vide separate seizure memo, Ex.PW177/7 and the car was also taken separately vide seizure memo, Ex.PW177/6 along with the bunch of keys. He also

proved the inquest proceedings of all the dead bodies and deposed that during the investigation, he found two sheared legs, one of which was near the car of CM, Punjab and a skull without torso, which was later on identified to be of deceased Dilawar Singh and all the dead bodies were sent to the Hospitals for postmortem examination and in the meanwhile, formal FIR was registered.

He also prepared the inquest report of the dead body of deceased Beant Singh and two legs and a skull and thereafter he prepared a detailed rough site plan of the place of occurrence, Ex.PW240/2. He also proved that the photographs of two legs and skull were also taken by the Expert, which are Ex.PW119/71 to Ex.PW119/94. He also deposed that he took into possession the various articles lying at the spot as mentioned in the seizure memo, Ex.PW179/5 and Ex.PW179/8. He further deposed that on the same day, he also recovered all the available incriminating articles like burn metallic pieces, some debris of the VIP Car, clothes and other articles numbering in 27 and those were taken into possession as per memo,

Ex.PW179/6 and he also identified those articles as Ex.P159 to Ex.P185. He also deposed about the postmortem and inquest proceedings of the dead and examination and injury record of the injured.

He further deposed that on 1.9.1995, investigation of this case was handed over to the CBI and as such, he handed over all the case diary documents prepared by him to Shri S.K.Saxena, DSP, CBI and the case property recovered from the spot, was deposited in the malkhana of the Police Station.

He further deposed that after transfer of the investigation to the CBI he remained associated in the investigations of the case along with the CBI as per their direction.

PW-241, Surinder Pal, who was also member of the investigating team deposed about the investigation carried out by him. As per this witness, on 1.9.1995, he had taken S.K.Chadha, Finger Print Expert of CFSL, New Delhi and Gautam Rai, Photographer to the Police Station North, Chandigarh where the Car bearing No. DBA-9598 was examined by the

Experts for taking chance finger prints and after taking the requisite prints and photographs, memo Ex.PW78/1 was prepared, which was signed by the witnesses. He further deposed that Sh.S.K.Chadha has taken 35 questioned prints and photographs and as per his direction, rear view mirror of the car was also taken into possession for examination in the Laboratory along with further incriminating articles, recovered from the Car and thereafter he recorded the statement of the witnesses associated in the investigation, as per the direction of the Chief Investigating Officer.

He further deposed that on 6.9.1995, both accused Lakhwinder Singh and Gurmeet Singh were produced in the court and their police remand was obtained and thereafter he also deposed about the detailed investigation carried out by him, which will be discussed at the appropriate time.

PW-242, Dr.M.A.Ali, Principal Scientific Officer, CFSL, New Delhi has examined the questioned documents recovered during the investigations of the case with the admitted and specimen

hand writing and signatures of the various accused persons and gave his opinion and proved the same in the court as per his report, Ex.PW242/1 to Ex.PW242/17.

PW-243, A.P.Singh, who was also member of the investigating team, deposed about the details of the investigation carried out by him, which will be discussed at the appropriate time.

PW-244, Dr.R.S.Dhanker, who was also member of the investigating team, deposed about the details of the investigations carried out by him and it will be discussed at the appropriate time.

PW-245, Dr.Lalji Singh, Director Centre for Cellular and Molecular Biology, Hyderabad has conducted the DNA test to establish the identity of the deceased Dilawar Singh as the Human bomb on the basis of two legs and skull recovered from the spot and accordingly, he deposed that on the asking of the CBI, he came to Chandigarh, where two legs and head lying in the mortuary, were shown to him and father and brother of deceased

Dilawar identified the body of Dilawar Singh but they were not 100% sure. As such to establish this fact through DNA Finger Printing, the blood samples of Harnek Singh father of the deceased, Chamkaur Singh, brother of the deceased and her mother were taken and thereafter some samples of some muscle pieces were taken from both the legs and skull, vide a separate identification card in the sealed parcels. After this, he conducted the requisite DNA test for comparison and matching of the DNA of Dilawar Singh with the samples of his family members and as per his report, Ex.PW245/7 he found that both the legs and the skull are the part of the body of the same person and that deceased Dilawar Singh was progeny of aforesaid Harnek Singh and Surjit Kaur as the DNA of body parts and Harnek Singh & Surjit Kaur matched with each other.

PW-246, Shri A.K.Chanda was also a member of the investigating team under DSP Punia, who was the first Chief Investigating Officer, and he accordingly deposed that on the asking of the Chief Investigating Officer, he brought Harnek Singh and Chamkaur Singh to P.G.I for the identification of two legs and a skull

and both of them identified the same to be of Dilawar Singh and thereafter their blood samples were also taken in his presence.

PW-247, Randhir Singh Punia, who was the first Chief Investigating Officer from the side of CBI and investigated the case upto 7.9.1995, deposed about the details of the investigations carried out by him, which will be discussed later on at the appropriate time.

PW-248, S.N.Saxena was the main Chief Investigating Officer of the case, who took over the investigation from PW-247. He also deposed as to the details of the investigation carried out by him and by the other members of the Investigating Team, as per his instructions, leading to the arrest of each and every accused person and the act & conduct of the each and every accused person to link him with the crime & question. The gist of the investigation of this witness is that accused Jagtar Singh Hawara, who was trained in Pakistan, was motivated by the terrorists to kill Beant Singh and consequent to that, he came to India and

conspired with the remaining accused persons to commit the crime, consequent to which, Dilawar Singh, assassin, acted as an human bomb and exploded himself near the Chief Minister, Beant Singh on 31.8.1995, resulting into the death of Beant Singh and other persons.

IMPORTANT DOCUMENTARY EVIDENCE OF THE PROSECUTION:

56.A Although, it was a marathon trial involving thousands of documents but the important documents relied upon by the prosecution and which are material for the adjudication of the case are mentioned herein below for ready reference:-

Ex. PW30/3 :

Statement of Constable Pala Ram giving the first hand information as to how the bomb blast took place and on the basis of which formal FIR No.96 Ex.PW30/4 was registered in the Police Station North, Chandigarh

Ex. PW217/2 :

Copy of the FIR No.RC 9(S)/95-SIU dt.1.9.1995 registered by the CBI after taking over the investigation of this case, as per the directions

of Ministry of Home Affairs.

Ex.PW116/1
to Ex.PW116/46:

All the proceedings relating to the postmortem examination of dead bodies of Yash Pal Bali, Lachman Dass, Mukhtiar Singh and Ranjodh Singh including the inquest proceedings and other police proceedings

Ex.PW1/1
to Ex.PW1/12 :

All the proceedings relating to postmortem examination of dead bodies of Chamkaur Singh, ASI Jagdish Singh, Tota Ram and Dhanwant Singh including the inquest proceedings and other police proceedings

Ex.PW2/1
to Ex.PW2/21 :

All the proceedings relating to the postmortem examination of dead bodies of Swaran Singh, Kultar Singh including the inquest proceedings and other police proceedings

Ex.PW3/1 to
Ex.PW3/10 :

All the proceedings relating to the postmortem examination of dead bodies of Jagdish Singh s/o Dial Singh including the inquest proceedings and other police proceedings.

**Ex.PW4/1 to
Ex.PW4/23 :**

All the proceedings relating to the postmortem examination of dead bodies of Ajaib Singh & Rajinder Parsad including the inquest proceedings and other police proceedings.

**Ex.PW5/1
to Ex.PW5/12 :**

All the proceedings relating to the postmortem examination of dead body of Balbir Singh including the inquest proceedings and other police proceedings.

**Ex.PW6/1 to
Ex.PW6/95 :**

All the proceedings relating to the postmortem examination of dead body of Beant Singh the then Chief Minister, Dr.Anil Duggal and Baldev Singh and the proceedings conducted for the postmortem of two legs and head recovered from the

place of blast, which was unidentified including the inquest proceedings and other police proceedings.

Ex.PW14/1
to Ex.PW14/12 :

Copies of the MLRs of all the injured namely Amar Singh, Bakshish Singh, Manojit Pal, Varinder Rana, Joginder Singh, Kesar Singh, Manmohan Singh, Upkar Singh, Kulwant Singh and Satinder Kumar, who received injuries because of this bomb blast.

Ex.PW32/1 to
Ex.PW32/9 :

The registration certificate, copy of Insurance note, copy of the cash receipt, copy of form No.29 and 30 and memo of identification of Car No.DBA-9598, Ex.P76 as proved by PW-32 Subhash Kumar Dutta, who sold this car to accused Jagtar Singh Tara, who represented himself as Basant Singh while purchasing the car.

Ex.PW34/1 to
Ex.PW34/4 :

Non judicial stamp paper on which affidavit of Amar Singh was typed and name of transferee was left

blank along blank form no.29 & 30 relating to Scooter No.PB-11 1955 Ex.P77, which was sold by PW-34 to deceased Dilawar Singh assassin.

Ex.PW42/1 :

Registration book of Scooter No.PB-11-1955, which was earlier owned by PW-34 Kamalpreet Singh Walia, who, in turn, sold the same to deceased Dilawar Singh.

**Ex.PW43/1 to
Ex.PW43/6 and
Ex.PW44/1 to
Ex.PW44/10 and
Ex.PW47/1 :**

All the documents related to ownership and transfer of Scooter No.PCP-2085, which was originally owned by PW-45 B.K.Chopra, who sold the same to PW-47 Harjit Singh, who, in turn, sold the same to accused Lakhwinder Singh.

**Ex.PW44/1 to
Ex.PW44/10 :**

Documents relating to the registration of the Scooter No.PB-11-1955 originally in the name of Darshan Singh and thereafter transferred in the name of Major

Singh and then in the name of Amar Singh PW-42.

Ex. PW49/1 :

Traffic Challan Book proved by PW-49, ASI Arun Kumar vide, which accused Balwant Singh was challaned on 24.8.1995.

**Ex. PW59/A to
Ex. PW59/L :**

The original documents including the identity card, driving licence, 2-3 applications of accused Lakhwinder Singh, one Account Opening Form of the Bank and 2-3 slips of cash memos containing the hand writing and signatures of accused Lakhwinder Singh as identified by PW-59 C. Balwinder Singh.

Ex. CD/1 :

Writing of accused Balwant Singh vide, which he stated that he does not want to cross examine PW-60 Raju Tamir Haran.

**Ex. PW60/A,
Ex. PW60/B,
Ex. PW60/B-1 to
Ex. PW60/B-53 :**

The original hand writing and signatures of accused Balwant Singh in his diary as identified by PW-60 Raju Tamir Haran.

Ex.PW61/A to
Ex.PW61/C :

The letter of appointment & termination of assassin Dilawar Singh as S.P.O in the Police Deptt.

Ex.PW62/A to
Ex.PW62/D :

Service book, appointment letter and other record relating to the appointment of accused Balwant Singh as Constable in the Punjab Police and his posting as gunman with Bhushan Sirhandi, a Press Reporter.

Ex.PW64/A to
Ex.PW64/D :

Attendance register, leave card of accused Gurmeet Singh proved by PW-64 & identified the hand writing and signatures of accused Gurmeet Singh.

Ex.PW65/A to

- Ex. PW65/G :**
Proceedings relating to recording of the confession of accused Balwant Singh by PW-65 B.K.Maheshwari, then Metropolitan Magistrate, Patiala House, New Delhi.
- Ex. PW68/A :**
Disclosure statement of accused Gurmeet Singh made in the presence of PW-70, Pranab Sain.
- Ex. PW68/B :**
The memo of recovery of the articles exhibited as Ex.P-83 to Ex.P-93 recovered from the room of accused Gurmeet Singh in the consequences of his disclosure statement.
- Ex. PW68/C :**
The memo of search of room of accused Gurmeet Singh along with recovery of articles.
- Ex. PW72/1 :**
Slip containing the registration of Scooter No.PB-11-1955 parked by accused Balwant Singh in the parking of PW-72.

Ex.PW72/2

:

Memo of recovery of Scooter and other articles lying in the Scooter found during the search of the Scooter No.PB-11-1955 made in the presence of PW-72, Prem Chand and PW-73, Kirat Mohinder of Pritam Cycle Stand, Patiala.

**Ex.PW75/A,
Ex.PW75/A-2 &
Ex.PW75/B**

:

The measurement-cum-bill book containing stitching of belt by PW-75, Jasbir Singh on the asking of accused Balwant Singh and Jagtar Singh Hawara.

**Ex.PW76/1 to
Ex.PW76/4**

:

The measurement-cum-bill book of PW-76, Amarjit Singh, Tailor Master containing the slip Ex.PW76/1-A for stitching the uniform of accused Balwant Singh and deceased Dilawar Singh.

Ex.PW80/1

:

Disclosure statement of accused Jagtar Singh Tara recorded in the presence of PW-80, Kirpal Singh.

Ex.PW81/1 :
Disclosure statement of accused Nasib Singh allegedly made in the presence of PW-81, Raghubir Singh.

Ex.PW81/2 :
Recovery memo of RDX recovered from the residence allegedly recovered from the house of Nasib Singh, in the presence of PW-81.

Ex.PW83/1 :
Search memo regarding the search-cum-recovery memo conducted in the house of accused Balwant Singh in the presence of PW-83, Jasbir Singh landlord of the house.

Ex.PW85/1 :
Search-cum-Recovery memo and the articles recovered from the room of the deceased Dilawar Singh compared in the presence of PW-85, G.D.Achint.

Ex.PW86/1 to Ex.PW86/13 :
All the proceedings relating to the recording of the confession of accused Jagtar Singh Tara u/s 164

Cr.P.C by PW-86 Sh.Balbir Singh then
Special Judicial Magistrate,
Patiala.

Ex.PW87/1
to Ex.PW87/23 :

Proceedings relating to the
recording of statement of the
witnesses Gurinder Singh, Gurbachan
Singh and Tejinderpal Singh by
Rajinder Singh then Metropolitan
Magistrate, Tis Hazari, New Delhi.

Ex.PW88/1 to
Ex.PW88/3 :

Proceedings relating to the search
and recovery of the articles from
the house of Jaswant Singh, Foster
father of Baljit Singh showing the
recovery of articles, Ex.PW-121 to
Ex.PW-136.

Ex.PW104/A :

Memo of recovery for taking into
possession the service book of
accused Balwant Singh prepared by
PW-89, Inspector Hardip Singh.

Ex.PW90/1 and
Ex.PW90/2 :

Proceedings regarding the search of

house of Balwant Singh.

Ex.PW91/1 to
Ex.PW91/22 :

Various goods receipts and the application and other documents in the hand writing of accused Navjot Singh, as proved on the file by PW-91, Ram Singh and PW-92, Gurpreet Singh, a co-employee of accused Navjot Singh.

Ex.PW93/1 :

Seizure memo vide, which personal file of accused Navjot Singh, Store Clerk, Ranbaxy Lab Limited, along with the goods receipts were taken into possession from PW-93, Major S.S.Bedi, Security Adviser of Ranbaxy Lab Limited.

Ex.PW94/1 to
Ex.PW94/3 :

The entries made by PW-94, Gurpreet Singh in the Hotel Register Ex.PW-94/3 of Hotel President Sita Bardi, Nagpur in the name of Sandeep Sharma on the asking of accused Balwant Singh, in the presence of PW Tejinder Pal Singh

Ex.PW95/1 to
Ex.PW95/3 :

The entry No.1842 on the Hotel Register, Ex.PW95/3 of Anand Mehal Lodge, Nagpur made by PW-95 on the asking of accused Balwant Singh in the name of Sandeep Sharma.

Ex.PW95/4 :

Seizure memo containing the letters written by accused Balwant Singh to PW-95 and handed over by him to the police. The letters are Ex.PW60/B-54 to Ex.PW60/B-62

Ex.PW95/5 to
Ex.PW95/16 :

Sheets containing the specimen hand writing and signatures of PW-95, Tejinder Pal Singh.

Ex.PW95/17
to Ex.PW95/25
Mark FFFFF,
Mark YY/3 to
mark YY/5,
Ex.PW88/3
Ex.PW95/26 :

Photographs of Balwant Singh and deceased Dilawar Singh.

Ex.PW60-B-1 to
Ex.PW60-B-53 :

Writing on the pages of diary, Ex.PW-

60/B in the hands of Balwant Singh, as identified by PW-95, Tejinder Pal Singh.

Ex.PW95/29 to
Ex.PW95/50 :

Various entries made by accused Balwant Singh in his assumed name as Sandeep Sharma, Rajiv Kumar, in the various Hotels where he stayed after escaping from Chandigarh till his arrest as identified by PW-95, Tejinder Pal Singh.

Ex.PW99/1 :

Memo of identification vide which PW-99 Chamkaur Singh and his father Harnek Singh identified two legs and skull of deceased assassin Dilawar Singh.

Ex.PW99/2 &
Ex.PW99/3 :

Identification forms vide which blood sample of Chamkaur Singh and his father were taken for DNA testing.

Ex.PW99/4 :

An application in the hands of

deceased Dilawar Singh as identified by PW-99, Chamkaur Singh.

Ex. PW99/5 :

Ex. PW99/6

The application moved by PW-99 Chamkaur Singh and his father for taking the delivery of the remnants of the parts of the body of assassin Dilawar Singh along with the receipts.

Ex. PW100/1 :

Memo of recovery vide which articles, Ex.P137 to Ex.P150 regarding the records of militant out-fits maintained by Intelligence being Punjab Police, was handed over to the CBI including the poster Ex.P150, vide which the assassin Dilawar Singh was shown to be a martyr for killing Beant Singh published by Babbar Khalsa International.

**Ex. PW101/A
to Ex. PW101/D :**

Signature of PW-101, Satwinder Singh @ Simpy on the photo graphs of accused Lakhwinder Singh, Dilawar

Singh, Jagtar Singh Hawara, Gurmeet Singh, Balwant Singh mark OOOOO, Mark- P P P P P, Ex.DC/2, mark Q Q Q Q Q, mark U U U /2.

Ex.PW103/A
to Ex.PW103/H,
Ex.PW103/J,
Ex.PW103/J/1 and
Ex.PW103/J/2,
Ex.PW103/K to
Ex.PW103/M :

The proceedings relating to the recording of confession of accused Shamsheer Singh @ Shera by PW-103, Dinesh Kumar Sharma then Metropolitan Magistrate at Patiala Court, House, New Delhi.

Ex.PW105/1 to
Ex.PW105/61 :

Sheets containing the specimen writing and signatures of accused Gurmeet Singh in Hindi, English & Punjabi and also in numerals taken in the presence of PW-105.

Ex.PW105/62 to
Ex.PW105/62 :

Sheets containing the specimen writing and signatures of accused Lakhwinder Singh in Hindi, English & Punjabi and also in numerals taken

in the presence of PW-105.

Ex.PW106/1 to
Ex.PW106/19 :

Sheets containing the specimen writing and signatures of accused Balwant Singh in English taken in the presence of PW-105.

Ex.PW107/1 :

Statement of PW-107 u/s 164 Cr.P.C recorded by PW-108.

Ex.PW108/1 to
Ex.PW108/6 :

Proceedings relating to recording statement of witness Sapinder Singh @ Pappu by PW-108, Paramjit Singh then Metropolitan Magistrate, Tis Hazari, New Delhi which is Ex.PW107/1.

Ex.PW111/1 to
Ex.PW111/4 :

Endorsement made by PW-111, Mohan Lal regarding the identification of the photographs Ex.PUUV/1, Ex.PSSSS, Ex.PW111/3 of accused Balwant Singh, Dilawar Singh and Lakhwinder Singh

**Ex.PW111/1
to Ex.PW111/64:**

Sheets containing the specimen hand writing and signatures of accused Lakhwinder Singh taken in the presence of PW-112, Chunni Lal Bali.

**Ex.PW115/1 to
Ex.PW115/14 :**

Sheets containing the finger prints of accused Lakhwinder Singh taken by PW-115, SS Basoya, Jr.Scientific Officer on the asking of the CBI.

**Ex.PW119/1 to
Ex.PW119/94 :**

Photographs of scene of occurrence showing the details of the scene of occurrence as well as photographs of two legs and skull taken by PW-119, Doctor Gopal Ji Mishra.

**Ex.PW120/1 to
Ex.PW120/5 :**

Sheets containing the hand writing and signatures of accused Jagtar Singh Tara taken in the presence of PW-120 P.C.Thakur.

Ex.PW121/1 and

Ex.PW121/2 :

Disclosure statements of accused Jagtar Singh Hawara suffered in the presence of PW-121, Anil Kumar Bhatia

**Ex.PW121/3 and
Ex.PW121/4 :**

Recovery memo showing the recovery of sketch map, Ex.PW121/3, as per disclosure statement of accused Jagtar Singh Hawara in the presence of PW-121 and PW-122.

Ex.PW121/5 :

Pointing out memo vide which accused Jagtar Singh Hawara identified the STD booth located at Meerut road in the presence of PW-121 and PW-122 and owner of the STD booth.

**Ex.PW122/1 and
Ex.PW122/2 :**

Photographs of Ram Singh @ Kuldip Singh and Jagtar Singh identified by PW-122.

**Ex.PW123/1 to
Ex.PW123/8 :**

Seizure memos vide which the letters written by Manjinder Singh to PW-123, Harbinder Singh.

**Ex.PW124/A,
Ex.PW124/A-1 &
Ex.PW124/A-2 :**

Register of Gurdwara Sheesh Ganj, New Delhi containing the entries regarding the stay of Manjinder Singh in the Gurdwara taken into possession vide memo Ex.PW124/B, when produced by PW-124 and PW-125.

**Ex.PW134/1
Ex.PW134/2-A
to Ex.PW134/2-C
and Ex.PW134/3:**

The register maintained by PW- 134 for running the STD PCO containing the details of the calls made in the month of October & November, 1995 by accused Jagtar Singh Hawara as proved by PW-134.

Ex.PW160/1 :

The report of PW-160, Dr.RS.Verma, of CFSL Chandigarh vide which all the articles recovered from the room of accused Gurmeet Singh, Ex.P-82 to Ex.P-91, when examined in the Laboratory were found containing the traces of RDX.

**Ex.PW163/1 to
Ex.PW163/3 :**

Two FDRs receipts in the name of accused Lakhwinder Singh which were recovered from his house, when searched by PW-164 P.C.Sharma, Inspector, CBI in the presence of PW-163 Raj Mohan and taken into possession vide memo Ex.PW163/3.

Ex. PW165/1 :

Report of Roop Singh, a Ballistic Expert of CFSL, Delhi vide which after examining 27 articles in various Division of the Central Forensic Laboratory, PW-165 concluded that a powerful improvised explosive device had exploded at the rear left side which is near the dickey portion of CM's Car bearing registration no. PB-08-3469 at the height of 3 feet above the ground level and about 2 kg of hike explosive RDX has been used along with 1 to 2 kg missiles in the form of iron bolts nut & bolts etc and this explosion has been caused by a human bomb who tied the explosive belt around his waist.

Ex. PW165/2 :

The report of PW-165, Roop Singh

Ballistics Expert after examining the gunny bag, Ex.P-98 containing RDX recovered from the possession of accused Nasib Singh, Ex.P99 who, vide his report confirmed that this black sticky material is RDX based high explosive and the traces of the RDX were found on 27 articles recovered from the side of the blast.

Ex.PW165/3 :

The report of PW-165 Ballistics Expert regarding the examination of belt Ex.P-97 and vide this report PW-165 held that two Kg of RDX based highly explosive can be filled in the said cloth belt.

Ex.PW165/4 :

Report of PW-165 Ballistics Expert regarding examination of battery Ex.P-153 recovered from the Car bearing registration No.DBA-9598 and vide this report PW-165 opined that a battery similar to the 9 bolt battery Ex.P-153 have been used in causing the explosion on the date of bomb blast.

Ex.PW165/5 :

The report of PW-165, Ballistics Expert, vide which, after examining the pieces of the news paper recovered from the room of accused Gurmeet Singh, in the Ballistics Division, PW-165 found traces of blackish material and after chemical instrumental analysis the presence of the RDX based high explosive in the stain available on the news pieces Ex.P-88 were confirmed.

Ex.PW165/6 :

Report of PW-165, Roop Singh Ballistics Expert, regarding examination of 25 parcels and vide this report after examining articles in the various laboratories of CFSL, PW-165 concluded that presence of RDX based high explosive as well as the traces of PETN was detected in the contents of 13 parcels which included the metallic pieces, other articles and the blood stained clothes of the person died in the blast.

Ex.PW166/1 to

Ex.PW166/29 :

Various proceedings and the report of PW-166, Tilak Raj Nehra a document expert of the CFSL, New Delhi who after comparing the questioned and standard writings attributed to accused Lakhwinder Singh, Gurmeet Singh, Balwant Singh, Jagtar Singh Tara and Navjot Singh vide his report, Ex.PW166/26 & Ex.PW166/28 gave his opinion as to the authorship of these hand writings and found that the questioned and writings of all the accused persons, when compared with the admitted hand writings, was found to be in the hands of one and the same person.

**Ex.PW167/1 &
Ex.PW167/2 :**

Report of PW-167 Dr.Rajinder Singh, a Senior Scientific Officer of CFSL in the Physics Division, who examined Battery Ex.P53 and 27 sealed articles and gave his opinion about the same.

**Ex.PW178/1 to
Ex.PW178/7 :**

Report of PW-178, S.K.Chadha, a Finger Print Expert of CFSL, Chandigarh who visited the spot on 1.9.1995 and examined the scene of crime as well as the Car bearing registration No.DBA-9598, Ex.P76 and took the various chance finger prints from the said car and also took the photographs of all those finger prints and the articles and after comparing the same with the specimen thumb impression of accused Lakhwinder Singh and Jagtar Singh found the same to be similar with the chance print as per reasons given in his report.

Ex.PW178/8 :

Report of PW-178, S.K.Chadha Finger Print Expert, vide which after taking the finger print of accused Balwant Singh and compared the same with questioned finger print, he concluded that those are similar to the question finger print.

Ex.PW179/5 :

The memo of recovery of various articles which were taken into possession from the scene of crime

on 1.9.1995 by PW-240, Nanha Ram in the presence of PW-179, SI Ved Parkash.

Ex. PW191/1-A
to
Ex. PW191/1-C :

The seizure memo vide which, on 3.9.1995 PW-231, A.K. Ohri recovered incriminating articles from the scene of crime including pieces of human flesh human skull with hair, shattered pieces and clothes some pieces of body part of Car damaged in blast.

Ex. PW198/1
to
Ex. PW198/4 :

Various seizure memos vide which PW-198, Sunil Kumar Sharma, Inspector C.B.I took into possession the record of the STD booth and Hotels.

Ex. PW201/1
to
Ex. PW201/3 :

The disclosure statements suffered by accused Jagtar Singh Hawara accused & Balwant Singh in the presence of PW-201, S.V. Singh being an independent witness.

Ex. PW201/4 :

The identification memo, vide which accused Jagtar Singh Hawara identified room no.203 of the Guest House where he met Manjinder Singh co-accused.

Ex.PW201/5 :

Identification memo, vide which accused Balwant Singh, identified the room of the Surya Guest House, where he stayed and met Jagtar Singh Hawara.

Ex.PW201/6 :

The identification memo, vide which accused Jagtar Singh Hawara identified the STD PCO located in Bhagat Singh market, New Delhi from where he used to make calls to Germany.

Ex.PW207/1 :

Signature of Wadhawa Singh on the fax message mark AAA, DDD, EEE, FFF vide which PW-207 identified the signature of Wadhawa Singh on the documents.

Ex.PW210/1 :

Seizure memo, vide which the Hotel

record of Hotel Prabhat Calcutta was taken into possession from PW 210.

Ex.PW211/1
and
Ex.PW211/2

:

Seizure memo, vide which the registration record of the Ambassador Car bearing registration No. DBA 9598 was taken into possession from the possession of PW-211, Narinder Singh, Inspector Transport Authority, New Delhi.

Ex.PW212/1
to
Ex.PW212/3

:

Pointing out memo vide which accused Balwant Singh identified the various shops at Patiala in the presence of PW-212.

Ex.PW216/1

:

Disclosure statement of accused Jagtar Singh Tara suffered by him in the presence of PW-216 consequent to which he identified the house of PW-32 S.K.Dutta vide memo Ex.PW38/8.

Ex.PW219/1

:

Seizure memo, vide which the service record file Ex.PW61/A of deceased Dilawar Singh was taken

into possession from PW-219, HC Nahar Singh.

Ex. PW220/1
to
Ex. PW220/6

:

Proceedings relating to recovery of record of Hotel City Lodge, Calcutta including guest register Ex. PW220/1 and the entries made in this register by the persons who stayed in the Hotel.

Ex. PW223/1
to
Ex. PW223/4

:

Proceedings relating to recovery of register of Hotel Kohinoor, Agra and the entries made in the register along with the identification of the photo graphs of the accused persons.

Ex. PW224/1

:

Proceedings relating to identification of the photo graphs mark WWWW by PW-224 regarding the stay of that person in their hotel.

Ex. PW-225/1
to
Ex. PW225/23

:

Sheets containing hand writing and the signatures of accused Balwant

Singh taken in the presence of PW-225 Pardeep Chand.

Ex. PW226/1
to
Ex. PW226/4

:

The proceedings relating to recovery of records of the Hotel Classic Calcutta including guest register and the entries made therein as well as identity of the photographs of the persons stayed.

Ex. PW228/1

:

Seizure memo vide which the scene of crime was inspected & the incriminating articles were lifted on 2.9.1995 by the Investigating Officer.

Ex. PW230/1
and
Ex. PW230/2

:

Proceedings relating to the recovery of register of the Hotel Kiran, Agra in the presence of PW-230.

Ex. PW231/1
to
Ex. PW231/5

:

The seizure memo vide which PW- 231 took into possession statement of calls of the call register of STD booth, Nagpur and other STD booths.

Ex. PW234/1

:

Report of PW-234, S.L.Mukhia document expert of the CFSL, Delhi who after comparing the hand writing and questioned documents with specimen documents gave his opinion as to the authorship of these hand writings in the hands of accused Balwant Singh and other persons.

Ex. PW235/1

to

Ex. PW235/3

:

Proceedings relating to the recording of the statement of the witnesses Chamkaur Singh u/s 164 Cr.P.C, by PW-235, Sanjay Garg, then Metropolitan Magistrate, Tis Hazari New Delhi.

Ex. PW236/1

and

Ex. PW236/2

:

The reports of PW-236, C.M.Patel Serological Expert of CFSL regarding the presence of human blood on all the incriminating articles recovered from the spot.

Ex. PW237/1

and

- Ex. PW237/2** :
Search-cum-recovery memo of the house of accused Gurmeet Singh prepared by PW-237.
- Ex. PW239/1**
to
Ex. PW239/10 :
The seizure memo and proceedings conducted by PW-239, A.S.Kaul relating to the investigation of the case.
- Ex. PW240/1** :
Inquest proceedings relating to the dead body of Beant Singh.
- Ex. PW240/2** :
The rough site plan of the scene of crime and place of occurrence prepared by PW-240, Nanha Ram showing existing State of Affairs, when he examined the scene of crime immediately after the blast.
- Ex. PW241/1** :
Seizure memo regarding the service record and leave application of accused Lakhwinder Singh recovered by PW-241, Surinder Pal Singh who assisted the IO .

- Ex.PW241/2** :
The file containing service record of accused Lakhwinder Singh taken into possession vide Ex.PW241/1.
- Ex.PW241/3** :
Arrest-cum-personal search memo of accused Jagtar Singh Tara.
- Ex.PW241/5** :
Seizure memo for taking into possession sealed packets from Inspector Nanha Ram.
- Ex.PW242/1
and
Ex.PW242/2** :
The report of PW-242, M.A.Ali, Document Expert of CFSL, Delhi who after comparing the disputed hand writing with specimen hand writing of accused Jagtar Singh Hawara and other accused persons and the witnesses, gave his detailed opinion with regard to that.
- Ex.PW244/1** :
Arrest memo of accused Navjot Singh
- Ex.PW244/2** :
Search memo of the house of accused

Navjot Singh showing the recovery of diary Ex.PW244/3 containing writings Ex.PW91/23 to Ex.PW91/25 and three loose sheets Ex.PW91/26 to Ex.PW91/30.

Ex. PW244/4 :

Search memo of the house of absconding accused Jagroop Singh showing the recovery of documents including the identity card of Inderjit Ex.PW109/1.

**Ex. PW245/1 ,
Ex. PW245/5 :**

Original Identification card as well as the photocopy of the same, prepared by PW-245 while taking the muscle pieces from the two legs and the skull along with the photographs of the same for D.N.A test.

**Ex. PW245/2
and
Ex. PW245/6 :**

Original Identification card as well as the photocopy of the same, prepared by PW-245 while taking the blood samples of Surjit Kaur mother of deceased Dilawar Singh, along with her photographs for the purpose

of DNA test to establish the identity of two legs and skull.

Ex.PW245/3 &

Ex.PW99/2 :

Original Identification card as well as the photocopy of the same, prepared by PW-245 while taking the blood samples of Chamkaur Singh along with his photographs brother of the deceased Dilawar Singh for the purpose of DNA test to establish the identity of two legs and skull.

Ex.PW245/4

and

Ex.PW99/3 :

Original Identification card as well as the photo copy of the same, prepared by PW-245 while taking the blood samples of Harnek Singh father of deceased Dilawar Singh, along with his photographs for the purpose of DNA test to establish the identity of two legs and skull.

Ex.PW245/7 :

to Ex.PW245/13

Report along with enclosures of PW-245 Dr.Lalji Singh, Director Centre For Cellular Molecular Biology,

Hyderabad, who after conducting all available tests for the comparison and matching of DNA of Dilawar Singh with other samples and vide report Ex.PW245/7, PW-245, Dr.Lal Ji Mishra concluded that as per the DNA profile deceased Dilawar Singh was the Progeny of aforesaid Harnek Singh & Surjit Kaur and both the legs and the skull are of one and the same person.

Ex.PW247/1 :

Letter of Govt of India, Ministry of Home Affairs transferring the investigation of the present case to the CBI.

Ex.PW247/2 :

The copy of the formal FIR which was re-registered by the CBI.

Ex.PW247/3 :

Disclosure statements of accused

& Ex.PW247/4

Balwant Singh recorded by PW-247, R.S.Punia .

Ex.PW248/1 :

Forwarding letter of Ms.Balwinder

Kaur of CFSL, Chandigarh, vide which a report regarding lifting of various articles from the spot Ex.PW248/2, was sent by Balwinder Kaur to the Chief Investigating Officer

Ex. PW248/2 :

Report of Balwinder Kaur of CFSL Chandigarh regarding lifting of various articles from the spot for examination.

Ex. PW248/3 :

The site plan prepared by the Architect on the direction of Chief Investigating Officer showing the position of the dead bodies and existing state of affairs.

Ex. PW248/4 :

Seizure memo of leave applications of accused Lakhwinder Singh.

Ex. PW248/5 :

Sanction of Central Govt as per the provision of Section 188 of the Cr.P.C .

Ex. PW248/6 :

Sanction of Central Govt & U.T. Govt for prosecution in respect of prosecution for offences under Explosive Substances Act.

Ex. PW248/7 :

Charge sheet submitted in the court after the completion of investigations.

56.B. In addition to the documentary evidence mentioned above, the prosecution has relied upon the photographs of accused persons as identified by various witnesses during the investigations and trial and the details of these photographs are as follows:-

Mark PW244/A :

Photographs of accused Jagtat Singh Tara (since proclaimed offender) as identified by PW-244 R.S.Dhanker Ist Chief Investigating Officer of the case.

Mark-TTT

Mark TTT/1 &

Mark TTT/2 :

Group photographs of accused Gurmeet Singh & Dilawar Singh along with certain other persons identified by PW-51, Surinder Sharma

Ex.PW113/1 :
Group photograph of accused Dilawar Singh and Gurmeet Singh as identified by PW-51, Surinder Kumar along with his signatures on the same.

Ex.PW101/A :
Photograph of accused Lucky as identified by PW-101, Satwinder Singh along with his signature on the same.

Ex.PW101/C :
Photograph of accused Jagtar Singh as identified by PW-101, Satwinder Singh along with his signature on the same.

Ex.PW101/B :
A group photograph of accused Gurmeet Singh & Dilawar Singh as identified by PW-101, Satwinder Singh along with his signatures on the same.

Ex.PW111 and Mark HHHH :
photographs of accused Lakhwinder Singh as identified by PW-111, Mohan

Pal along with his signatures on the same.

Ex. PW32/9 :

Photo graph of accused Jagtar Singh Hawara as identified by PW-32, S.K.Dutta along with his signatures on the same.

**Mark 239/A
to
Mark 239/D :**

Group Photographs of marriage ceremony including the photograph of accused Balwant Singh as identified by PW-239, A.G.Kaul along with his signatures on the same.

Mark-QQQQQ :

photographs of accused Balwant Singh as identified by PW-101, Satwinder Singh along with his signatures on the same.

Mark-SSS :

Photograph of accused Gurmeet Singh as identified by PW-51, Surinder Sharma along with his signatures on the same.

Mark TTTTT

Mark VVVVV :

Photographs of accused Jagtar Singh Hawara as identified by PW-210 Ajay Gupta & PW-220, Anwar Khan along with their signatures on the same.

Mark SSSS :

Photograph of accused assassin Dilawar Singh as identified by PW-111, Mohan Lal along with his signatures on the same.

**56.C. LIST OF MATERIAL INCRIMINATING
ARTICLES AND OBJECTS WHICH HAVE BEEN RELIED
UPON BY THE PROSECUTION TO LINK THE ACCUSED
PERSONS WITH THE CONSPIRACY.**

ARTICLES:

NATURE OF ARTICLES

Ex.P-1 to Ex.P36:

Parcels containing clothes and the belongings of the deceased persons including the metallic and glass pieces recovered from the dead bodies.

Ex.P37 to Ex.P44:

Parcels containing the belongings of the deceased Chief Minister Beant Singh, Kara of Sardar Beant Singh,

Denture of Sardar Beant Singh,
suture of Sardar Beant Singh.

Ex.P45 to

Ex.P49:

Parcels containing the clothes and belongings of deceased Dr.Anil Duggal as well as the glass and metallic pieces removed from his dead body .

Ex.P50 to Ex.P53:

Parcels containing shoe removed from one of the two legs as well as its wrapper the epidermal cast and the soul of the right foot and left foot.

Ex.P54 to Ex.P61:

Parcels containing the partly burnt shoe right side belt portion of the pant, shirt,undergarment and the parcel containing metallic pieces removed from the dead body of deceased Yash Pal Bali.

Ex.P62 to Ex.P70:

Packet containing khaki shirt,sky shirt, banyan, red kacha,belt with

PAP batch, portion of the khaki pant, left shoe partially burnt, khaki socks and plastic jar removed from the dead body of deceased Lachman Dass at the time of postmortem examination.

Ex.P70 to Ex.P75:

Parcel containing the portion material wrapped in a cloth and clothes of deceased Ranjodh Singh removed at the time of his postmortem examination.

Ex.P76 :

The Car bearing registration No.DBA-9598 used by the accused persons in the commission of the crime.

Ex.P77 :

Scooter No.PB-11-1955 which was sold by Shri Kamalpreet Singh to Assassin Dilawar Singh.

Ex.P78 :

Brief case used as medicine bag by Dr.Duggal.

Ex.P79 :

Scooter bearing registration No. DL-

5-SF-0318

- Ex. P80** :
Scooter No. PCP 2085 owned by accused Lakhwinder Singh which has been used by him in the commission of the crime.
- Ex. P81** :
Car bearing registration No.CH-01-G-1035 one of the car which was parked near the VIP gate when the explosion took place.
- Ex. P82** :
Envelope containing the seals of CFSL .
- Ex. P83** :
Envelope containing the seals of CBI bearing the signatures of PW-68, Puran Chand.
- Ex. P84** :
Polythene bag in which the card board was packed.
- Ex. P85** :
Cover in which the card board was covered.

- Ex.P86** :
Card board
- Ex.P87** :
Three pieces of card board.
- Ex.P88** :
Three pieces of news paper.
- Ex.P89** :
Envelope containing the sample
seals of CFSL.
- Ex.P90** :
Envelope containing the sample seals
of CBI also having the signature
of PW-68.
- Ex.P91** :
Phial containing black granules
recovered from the room of accused
Gurmeet Singh.
- Ex.P93** :
Polythene bag of Ferozi
- Ex.P94** :
Helmet recovered along with Scooter
No. PB-11-1955 from Pritam Cycle
Stand, Patiala in the presence of
PW 72.

Ex.P95 :
The envelope containing the belt recovered from the Scooter.

Ex.P96 :
The envelope in which the belt was sealed

Ex.P97 :
The green colour belt recovered from the dickey of the Scooter No. PB-11-1955

Ex.P98 :
The cloth bag in which the belt was sealed

Ex.P99 to Ex.P118 :
Books, appointment letter, Diary, application form bearing the signature of Dilawar Singh and five news paper of 'Aj Di Awaz' of different dates, one small piece of paper receipt dt.31.8.1995 recovered from the room of accused Balwant Singh when searched on 5.9.1995 in the presence of PW 83.

Ex.P118 to Ex.P120 :

Blank proforma, Punjabi book title Saheed Bhagat Singh and photo graph of Dilawar Singh which were recovered from the room of Dilawar Singh when searched in PW 85 G.D.Achint.

Ex.P121 to

Ex.P136

:

Letters and papers along with the khaki uniform recovered from the toilet of the house of Jaswant Singh, Foster father of accused Balwant Singh in the presence of PW-88, Budh Ram Garg.

Ex.P137 to

Ex.P150

:

Copy of the constitution magazines and the statement issued by B.K.I in connection with this case along with the published after the murder of Beant Singh proclaiming the deceased Dilawar Singh as Martyr

Ex.P-151

:

Sealed envelope containing the seals of the CFSL in which dry cell battery was packed after inspection by CFSL.

Ex.P152

:

The envelope in which the battery cell was recovered by the recovery Officer.

Ex.P153

:

Dry Cell battery of 9 volt

Ex.P154

:

A tag of CFSL bearing the signature of PW-161, Dr.Rajinder Singh

Ex.P155

:

Rear view Mirror of Car no. DBA-9598

Ex.P156

:

The cloth bag in which the mirror was sealed .

Ex.P157

:

A card board carton in which the parcel was again sealed.

Ex.P158

:

Collective parcel containing the burnt pieces of cloth, debris, iron pieces and various other articles of the dead persons, taken into possession from the place of occurrence on 1.9.1995

- Ex.P159** :
White pieces of cloth taken into possession from the spot.
- Ex.P160** :
Partly burnt Marked badges lifted from the place of occurrence by PW-179.
- Ex.P161** :
Bag containing two cells and other articles
- Ex.P162** :
The bag containing the burnt uniform of National Security Guards.
- Ex.P163** :
Parcel containing the lense (Glass) with a mark of Rayban goggles.
- Ex.P164** :
Parcel containing the pieces of wall clock.
- Ex.P165** :
Parcel containing the pieces of iron and one red & blue cloth.
- Ex.P166** :

Parcel containing the burnt pieces of coal.

Ex.P167 :
The bag containing burnt pieces of the uniform of Haryana Police.

Ex.P168 :
The bag containing ashes collected from the spot of blast.

Ex.P169 :
The bag containing burnt pieces of clothes.

Ex.P170 :
Bag containing broken frame of spectacles.

Ex.P171 :
The Bag containing one iron piece along with pieces of clothes.

Ex.P172 :
The bag containing burnt plastic pieces.

Ex.P173 :
The bag containing burnt material.

- Ex.P174** :
The bag containing pieces of metal.
- Ex.P175** :
The bag containing burnt pieces of metal pieces.
- Ex.P176** :
The bag containing burnt pieces of cloth.
- Ex.P177** :
The bag containing cap of Khaki colour with badge.
- Ex.P178** :
The bag containing a burnt piece of plastic.
- Ex.P179 & Ex.P180** :
The bag containing burnt pieces of cloth.
- Ex.P181** :
The bag containing one soap.
- Ex.P182** :
The bag containing broken pieces of the glass of spectacles.

Ex.P183 :
The bag containing one empty sell of battery along with two pieces.

Ex.P184 :
The bag containing one wrist watch with broken glass with a time stopped at 5.12.

Ex.P185 :
Bag containing one wire along with one iron piece in a melted condition.

Ex.P186 to Ex.P188 :
Three pieces of damaged car bearing registration No. PB-08-3469.

Ex.P189 :
Number plate along with the tail light of car bearing no.PB-08-3469.

Ex.P190 :
Plastic container containing blood sample collected from the scene of occurrence collectively exhibited as Ex.P190.

Ex.P191 to Ex.P195 :
Sweepings five in numbers obtained

from the outer portion of Car no.PB-08-3469.

Ex.P196 :
Identity card of deceased ASI Mukhtiar Singh.

Ex.P197 :
One blood stained copy containing the emblem of Haryana Police.

Ex.P198-A
to Ex.P199-B :
Pieces of Car no. PB-08-3469

Ex.P199 :
A blood soaked pieces of cloth recovered from the scene of the occurrence collectively sealed in one bundle.

Ex.P200 :
One blood stained white printed shirt.

Ex.P201 :
One khaki blood stained turban.

Ex.P202/1
to Ex.P202/6 :
Three live cartridges of different bores along with the bullets heads.

Ex.P203/1

to Ex.P203/6 :

One khaki turban, one light blue turban, one pink and one white turban taken from the scene of occurrence.

Ex.P204 :

Bunch of keys recovered from Car No. DBA-9598.

Ex.P205 :

Identity card of deceased Dhanwant Singh recovered during the postmortem examination.

Ex.P206 :

Identity card of deceased Kesar recovered during the postmortem examination.

Ex.P207 :

Identity card of Mukhtiar Singh deceased recovered during the postmortem examination.

Ex.P208 :

Identity card of deceased Balbir Singh, MLA recovered during the postmortem examination.

- Ex.P209** :
Belongings of deceased Kultar Singh son of Shaki Singh handed over at the time of post mortem examination.
- Ex.P210** :
Voter identity metallic pellets recovered from the dead body of Swaran Singh son of Hajura Singh during the postmortem examination.
- Ex.P211** :
Packet containing personal belongings recovered from the dead body of Swaran Singh s/o Hazura Singh during the postmortem examination.
- Ex.P212** :
Packet Containing metallic and glass pieces recovered from the dead body of Yash Pal Bali s/o Hari Ram during the postmortem examination.
- Ex.P213** :
Packet containing clothes recovered from the dead body of deceased Yash Pal Bali during the postmortem examination.

Ex.P214 :
Packet containing personal belongings like shoes,pant, kachha (under-wear)etc of deceased Ranjodh Singh during his postmortem examination.

Ex.P215 :
Packet containing personal belongings recovered from the dead body of deceased Jagdish s/o Teja during his postmortem examination.

Ex.P216 :
Packet containing the personal belongings of deceased Lachman Dass s/o Ram Lal recovered during the postmortem examination.

Ex.P217 :
Packet containing the personal belongings recovered from the dead body of deceased Balbir Singh during the postmortem examination.

Ex.P218 :
Packet containing personal belongings recovered from the dead body of deceased shamsher Singh

during the postmortem examination.

Ex.P219

:

Packet containing glass and foreign material recovered from the dead body of Mukhtiar Singh s/o Pal Singh.

57. In addition to the above discussed evidence of the prosecution, during the defence evidence, the prosecution has also relied upon the following documents which were put to the defence witnesses.

Ex.PX/1

:

Copy of the Memo of recovery dated 18.9.1995.

Ex.PX/2

:

Containing 29 pages, copies of the malkhana register of Police Station, CBI of New Delhi.

Ex.PX/3

:

Cutting of the News paper The Tribune dt.27.9.1995 relating to the case.

Ex.PX3-A &

Ex.PX/4

:

Cuttings of the news items of the Hindustan Times dated 17.9.1995 relating to the case in hand.

Ex.PX/5 to

Ex.PX/9 :

Cutting of the news paper The Indian Express dt.7.9.1995, 8.9.1995 and 9.9.1995.

**STATEMENTS OF ALL THE ACCUSED UNDER SECTION
313 Cr.P.C. ALONGWITH THEIR EXPLIANATION
AND DEFENCE VERSION.**

58. After conclusion of the evidence of the prosecution, all the accused persons facing trial in this case, were examined under Section 313 Cr.P.C one by one, and each and every incriminating circumstances, brought by the prosecution, against each and every accused persons, were put to each of the accused persons separately, as the entire case of the prosecution is based on the theory that as per a well laid conspiracy, all the accused person committed this crime.

59. First of all, accused Balwant Singh was examined u/s 313 Cr.P.C and when each and every circumstance of prosecution was put to him, starting with the factum of conspiracy till its execution including the role played by each and

every co-accused of this accused, he pleaded ignorance about some facts and admitted some facts and ultimately, he was called upon to explain that in view of the evidence of the prosecution, he along with his co accused persons including the persons declared as proclaimed offender, hatched conspiracy to kill Sardar Beant Singh, then Chief Minister of Punjab

60. In pursuance of that, deceased assassin, Dilawar Singh acted as human bomb and exploded himself near the Car of the Chief Minister on 31.8.1995 at about 5.10 p.m, at the Porch of VIP Gate of Punjab & Haryana Civil Secretariat, Chandigarh leading to death of Sardar Beant Singh along with 16 other persons and left a number of persons as injured. In reply to this, he submitted a written explanation which is exhibited as Ex.D(BS)/A running into four pages. He also stated that he strapped a belt bomb around the waist of deceased Bhai Dilawar Singh and killed Beant Singh and held deceased Dilawar Singh to achieve his goal and he did so for the cause of independence of his brotherhood as Beant Singh was killer of thousands of innocent Sikhs and starting claiming himself to be incarnation of Guru Gobind Singh and also proclaimed himself Avtar of Lord Rama.

61. Even in his written explanation **Ex.D (BS) /A**, he reiterated the above facts saying

that when the Sikh community started '**Dharam Yudh Morcha**' on the direction of Shri Akal Takht Sahib through political and religious organization, it was not liked and tolerated by the Congress Govt at the Centre and in the month of June, 1994, the Central Govt attacked Shri Harmandir Sahib and Shri Akal Takht Sahib and damaged the building and killed so many innocent persons and played with the religious feelings of Sikh community. To take the revenge two Sikh youngmen killed Smt.Indira Gandhi, then Prime Minister of India and after her death, the Congress led Indian Govt indulged in hallow caste in Delhi and other places in the country and again innocent Sikh persons were killed in thousands but no action was taken against any of the guilty. After that, the Congress Govt gave a free hand to its agencies and the Police in Punjab and S.Beant Singh was made Chief Minister of Punjab against democratic procedure by bogus voting. S.Beant Singh, Chief Minister of Punjab indulged in killing innocent Sikhs on the asking of the Central Govt and the dead bodies of so many Sikh persons were cremated claiming the same to be unclaimed. After killing so many innocent persons, Sardar Beant Singh started claiming himself as the messenger of peace and incarnation of Guru Gobind Singh and also proclaimed himself Avtar of Lord Rama. When all this crossed the limit and was not tolerated by them, they planned to kill Beant Singh.

62. He further proclaimed that on 31.8.1995, deceased Bhai Dilawar Singh wrapped a bomb on his waist and collided with Beant Singh and killed him. He further explained that he was also involved in the killing of Beant Singh by deceased Dilawar Singh and he has no remorse for doing this. However, as far as the remaining persons implicated by the CBI, they have no role and have been falsely implicated. With this explanation, he alleged that he does not believe in the Constitution of India and the system.

63. Even on 18.3.2006, when the recording of statement of accused Balwant Singh was started and when first question was put to him, he read out a four pages writing which has been marked as A-1 to A-4 and made part of the record. It was later on exhibited as Ex.D(BS)/A.

64. Even prior to that on 24.12.97 and 24.1.1998, accused Balwant Singh filed a written application admitting the facts, mentioned above. Even during the recording of the statement of the witnesses, Raju Tamir Haran (PW 60) one of the witnesses, during his cross examination, he again gave a writing **Ex.CD/1** admitting the killing of Sardar Beant Singh.

65. Not even this, when PW-95, Tejinder Singh,

with whom the accused Balwant Singh stayed at Nagpur and before whom, he disclosed all the details leading to this conspiracy, stated so on oath accused Balwant Singh while cross examining him alleged that whatever has been stated by this witness is correct except qua accused Gurmit Singh. This stand of accused Balwant Singh further shows that he has confessed the killing of Beant singh almost the manner alleged by prosecution.

66. Even during the course of arguments, he submitted a writing, which was made part of record on 20.4.2007, taking the same stand.

67. Similarly, when all the remaining accused persons were examined one by one, and each and every piece of incriminating evidence was put to them and they were also confronted with the crux of the evidence and their link, with this assassination, all of them denied the entire case of the prosecution and alleged that they have been falsely implicated by the Central Bureau Investigation.

68. When the statement of accused Gurmeet Singh was completed u/s 313 Cr.P.C, he was called upon to explain the reasons and circumstances, in which, he was arrested and link with this case, he replied that he is innocent and has been falsely implicated only because of the fact that he is

neighbour of Dilawar Singh and he was arrested by the CBI and forced to become a witness but when he refused to oblige the CBI, he was falsely implicated in this case. He also give his explanation in writing **Ex.D (GS)** in which also he reiterated this fact and alleged that he has been falsely implicated.

69. In the same manner, when statement of the accused Navjot Singh under Section 313 Cr.P.C was completed and he was called upon to explain, why he has been arrested and link with this case, he replied that he is innocent and falsely implicated. On 17.9.1995, at about 8.00 p.m, the raiding party of the Punjab Police and the CBI forcibly entered into his house and they forcibly took away him and his father including his grand father and they also took away cash, gold ornaments and other valuable from his house after keeping them in illegal custody. He was falsely implicated in a sedition case in Delhi and was later on implicated in this case on the asking of their neighbour, Harjinder Singh Gill, with whom his family is having a dispute about the payment of cost of the common wall. With these facts, he alleged that on 31.8.1995, he was present on his duties at Ranbaxy till 18:48 hours as is clear from Ex.PEEEEEE and has been falsely implicated in this case without there being any act of omission and commission on his part.

70. In the same manner, when statement of the accused Shamsheer Singh under Section 313 Cr.P.C was completed, he explained that he is falsely implicated and in his written explanation in Punjabi in this regard, which is **Ex.D-SS**, he alleged that he was arrested on 29.9.1995, and was tortured by the Punjab Police and the CBI and was forced to make disclosure statement before a Magistrate at Delhi admitting his involvement but he never made any disclosure statement before the Magistrate and his statement recorded in Hindi was never read over or explained to him as he does not know Hindi or write Hindi. He further alleged that he is not a resident of Ukasi Jattan. On the other hand he is resident of Village Kamalpur. With this explanation, he also pleaded that he has been falsely implicated.

71. In the same manner, when statement of the accused Jagtar Singh Hawara under Section 313 Cr.P.C was completed, and he alleged that he is innocent and falsely implicated and as per his written explanation in this regard **Ex.D (JSH)**, he justified the killing of Beant Singh but alleged that he has no concern with his killing and has been falsely implicated. He again alleged that he is not member of any Terrorist Organization. On the other hand, he is member of religious organization known as Akhand Kirtani Jatha which is working for

perpetuating teaching of Sikh religion. He further alleged that he has no concern with any of the accused persons facing trial in this case.

72. In the same manner when statement of the accused Lakhwinder Singh under Section 313 Cr.P.C was completed, he alleged that he has been falsely implicated and he further alleged that before 31.8.1995, he was working as driver with Sant Ram Singla, a Member of Parliament and after making a formal entry in the Daily Diary Register kept in his deptt i.e Security Wing, he went to Delhi with Sant Ram Singla. On 1.9.1995, he came to Chandigarh to get his salary and received the same from Mini Secretariat but after that, he was arrested by the Police and falsely implicated in this case. He further alleged that at the time of alleged occurrence of paint of car and other facts alleged against him and when this blast took place he was with Sant Ram Singla, Member of Parliament at Delhi but despite this, he has been implicated falsely being a neighbourer of deceased Dilawar Singh. He further alleged that the police has tried to manipulate his finger prints on the rear view mirror of the alleged car and as such, he is falsely implicated. He further alleged that he was not knowing any of the accused persons before coming to Jail. With these averments, he reiterated that he has been falsely implicated in this case.

73. In the same manner, when statement of the accused Nasib Singh under Section 313 Cr.P.C was completed, he alleged that he is innocent and falsely implicated in this case and further explained that his daughter, Harpreet Kaur was being falsely implicated by the CBI on the allegations that she is conspirator in this case. However, under the pressure of Panchayat and the respectables of the Village, the CBI could not do so and he was arrested by the Punjab Police and implicated falsely in this case. He also alleged that he was not knowing any of the accused of this trial till the time of his arrest. The RDX has been planted on him whereas no recovery was made from his house and as such, he alleged that he has been falsely implicated in this case.

74. It will also be apposite to mention here that accused Jagtar Singh @ Tara was also facing trial along with present accused persons and till the year 2004, the prosecution witnesses were examined in his presence including the making of confession statement, Ex.PW86/6 recorded by PW-86, Balbir Singh, then Special Judicial Magistrate, CBI Patiala and during the pendency of the trial against Jagtar Singh Tara, he filed an application on 6.5.1999, wherein he retracted from his confessional statement recorded by PW-86 but he further alleged that as disclosed by him, earlier he was also with deceased Dilawar Singh to kill

Beant Singh. Similarly, even prior to 2.9.1998, he admitted that he was present with Dilawar Singh while killing Beant Singh and he has no remorse for the same.

75. Although, on completion of statements of all the accused persons under Section 313 of the Cr.P.C., accused Balwant Singh had not opted for any defence, all the remaining accused persons opted for defence evidence and in order to prove their defence stories, they examined as many as 26 following witnesses:-

DW-1, Pankaj Sharma, Junior Clerk who has brought the original News Paper The Tribune for the dates 1.9.1995, 3.9.1995, 28.1.1996, 21.2.1996, 27.4.2003 regarding the news of assassination of Sardar Beant Singh and he deposed accordingly.

DW-2, Prabhjot Paul Singh, Bureau Chief in The Tribune, Chandigarh who has deposed that the news, Ex.DW1/3 was published after his reporting and story which was prepared by him after talking to the concerned persons and authorities.

DW-3, R.S.Bajwa (ret'd Lt.Col) is the neighbour of Tirlok Singh father of

accused Navjot Singh, who has deposed that there was dispute between Mr. Gill and Tirlok Singh regarding payment for the cost of the common wall of the house of Tirlok Singh. This witness has further deposed that on 17.9.1995, at about 7/8.00 p.m., when he was present in the lawn of his house, at that time, 60-70 persons had come in front of house of Tirlok Singh and took away Tirlok Singh, his wife, his son and his father and brother leaving behind only his daughter.

DW-4, Mohkam Singh has deposed that when he was in judicial lock up, accused Navjot Singh met him in the judicial lock-up at Delhi for three occasions. He was brought by two police officials as he was unable to walk himself with swollen eyes. This witness further deposed that accused Navjot Singh disclosed him that the police has implicated him in a criminal case of Delhi for pressurizing him to become a witness relating to assassination of Beant Singh. This witness further stated that on this he said to accused Navjot Singh if he knows anything about the case then he must become a witness. On this, accused Navjot Singh stated that he does

not know anything about that assassination or the person responsible for the same.

DW-5, Tirlok Singh, father of accused Navjot Singh, deposed that his son Navjot Singh has been falsely implicated by the CBI on the asking of their neighbour H.S.Gill, who was having enmity with them and he also deposed about the complaints and the representations made by him after registration of case against his son.

DW-6, Dr.Daisy Sahini, who is working as Additional Professor, Deptt of Anatomy, P.G.I Chandigarh deposed that no register regarding examination of medical legal work was being maintained in their deptt.

DW-7, Dr.R.M.Singh, SMO General Hospital, Sector 26 Chandigarh was summoned by the defence in order to show that separate mortuary register is being maintained in the General Hospital. This witness accordingly deposed that he has brought the mortuary register for the relevant period in this case which is Ex.D7 and further deposed that as and

when a dead body is brought in the mortuary for post mortem examination, the particulars of the same are entered in this register for conducting the post mortem examination and apart from this, no other register is being maintained for receiving the dead bodies in the mortuary.

DW-8, Sunil Arora, Assistant Registrar, National Human Rights Commission, New Delhi has brought the concerned file relating to the complaints filed by Tirlok Singh Chhabra which was registered in their office as file no.27/7/95-LD and this witness deposed accordingly.

DW-9, Prahlad Singh, Malkhana Incharge of Anti Corruption Bureau (CBI), Chandigarh was examined to prove the entries of case property of this case in the said register. This witness accordingly deposed that all the seizures and case property relating to all the case which are tried by the CBI, Chandigarh including the cases relating to SIU-XV Chandigarh are entered and kept at Chandigarh. However, if the case property of any other branch is kept at

Chandigarh temporarily, no entry of the same is being made in the said register. He also deposed that the case relating to Beant Singh assassination was investigated by the Delhi Branch and as such, no entry regarding depositing or despatch of any case property relating to this case has been entered. In cross examination, he admitted that as per his information, the case property relating to this case was temporarily deposited in malkhana at Chandigarh along with the seizure memos.

DW-10, M.S.Kalania, Under Secretary, Ministry of Home Affairs, New Delhi was summoned with some record but he moved an application claiming privilege of that record and that application of the Home Ministry was allowed and this witness was discharge accordingly.

DW-11, Pankaj Kalra, Cashier, CBI Head Office, New Delhi who has brought the summoned record i.e the original record relating to the tour programme of Shri M.L.Sharma, then Joint Director along with TA bills from the period of 1.9.1995 to 31.12.1995 and this witness deposed accordingly.

DW-12, S.K.Singh, who is posted as S.P(Security), Punjab Sector 9, Chandigarh has brought the summoned record i.e the daily diary register for the month of April, 1995 to 1.9.1995. This witness further deposed that Lakhwinder Singh, who was driver in the MT department, proceeded on leave for two days, vide DDR No.24 dt.11.4.1995 at 7.40 a.m and on 11.7.1995, C.Lakhwinder Singh No.409 was deputed to report to Shri Surinder Singla, then Member of Parliament as driver and this witness further deposed accordingly.

DW-13, S.K.Jain, Assistant, who has been authorized by the Presidents Secretariat to depose in this case and this witness further deposed that they have destroyed all the records after five years of its receipts or maintenance.

DW-14, S.R.Thakur, Inspector, CBI who has brought the summoned record i.e receipts register maintained in CJO Complex and North Block for the period of 4.1.1996 to 9.12.1996. This witness further deposed that as per the record no complaint of Tirlok Singh Chhabra

resident of SAS Nagar, was received either in the month of April, 1996 or in the month of July, August, 1996.

DW-15, B.A.Khan, Deputy Secretary, who has deposed that he has not brought the summoned record of file No.S/23/33/35/00NCM dt.16.6.2000 as the same has been weeded out and he deposed accordingly.

DW-16, Gurjit Singh, Clerk who has brought the news paper dated 21.2.1996, which was published by Sadhu Singh Hamdard Trust Jalandhar and he deposed accordingly.

DW-17, Paramjit Kaur, w/o late Jaswant Singh Khalra and she deposed that her husband late Shri Jaswant Singh Khalra was the General Secretary of Human Rights Wing of Siromani Akali Dal and he used to raise voice as & when any human rights violation were done either by the Govt or its instrumentalities. Even after the incident of 1984 in the Golden Temple, her husband agitated the discrimination being purported against the Sikh community. In the year 1992, when deceased Beant Singh became Chief

Minister of Punjab, he also started working against the Sikh Community and did lot of atrocities towards the Sikh community including fake encounters and at that time, her husband also raised voice against the atrocities of Beant Singh and prepared a report regarding illegal killings of Sikhs during his tenure and having been cremated them as unclaimed bodies at different places in Punjab and in this manner, she tried to project that deceased Beant Singh was not working for the Sikh community and she and her husband were harassed by Beant Singh and after the death of Beant Singh, the atrocities of Sikh community including false encounters and other atrocities were stopped and came to an end to a large extent.

DW-18, Harish Chander Lower Division Clerk of Record Room office of the CBI, New Delhi was summoned with receipt and dispatch register for the period 1.8.1995 to 31.3.1996 of the office of the CBI-SCR/II, New Delhi but he deposed that this record has been destroyed as per the certificate, Ex.DW18/B.

DW-19, Hira Singh, Inspector CBI was

summoned with the record of malkhana of the CBI and he accordingly deposed about the depositing of the case property relating to this case in his malkhana as per the different entries.

DW-20, P.K.Ghosh, being a member of the Executing committee of Sahirdaya Group Society, Rohtak Road, Delhi was summoned with the visiting register maintained by the society for the period August and September, 1995. But he deposed that no such register was being maintained at the relevant time.

DW-21, Joginder Singh, Editor of the Spokesman a monthly Punjabi Magazine deposed about the publishing of some reports in his Magazine relating to this case and proved it accordingly.

DW-22, Sanjay Mehta, Personal Executive, Hindustan Times was summoned to prove the copies of the news paper dt.2.9.1995 and he accordingly proved the copy of the News paper as Ex.DW22/D.

DW-23, Bipan Pabbi, Resident Editor of Indian Express, Chandigarh was also summoned to prove the copies of the

Indian News Paper from 1st September to 5th September and dated 8.2.1996 and he accordingly proved these copies as Ex.DW23/A to Ex.DW23/C.

DW-24, Shri D.B.S.Shastrri, Section Officer of Central for Cellular or Molecular Biology was summoned to bring the receipt and despatch register which was being maintained in DNA testing Laboratory during the period September, 1995 but he deposed that no despatch/receipt register was being maintained in DNA testing Laboratory during the period in question.

DW-25, Ashok Kumar Walia, Inspector, Food & Supply, Rajpura was summoned to bring the record of the year 1994 relating to the ration card issued in the name of accused Shamsher Singh but he deposed that the record of 1994 has been destroyed but proved the original ration card Ex.DW25/A being issued after proper verification containing the true particulars.

DW26, HC Gurmail Singh, complaint Clerk of SSP Ropar brought the receipt register of SSP Ropar with effect from

1.5.1995 onwards and deposed that no application or complaint has been received in SSP Office from Tarlok Singh, resident of house no.889, Sector 60, Mohali.

76. In addition to the defence evidence led above, the accused persons also relied upon the following documents, which were put to the prosecution witnesses during their statement at different times.

- Ex.D-1** Copy of the application moved by SI Gamdoor Singh for the postmortem of two legs and head skull.
- Ex.D-2** Identification report-cum-memo dated 5.9.1995 prepared by Inspector A.K.Chanda for the identification of two legs and the skull by Harnek Singh & Chamkaur Singh, father and brother of deceased Dilawar Singh which was later on exhibited as Ex.DW99/1.
- Ex.D-3** Report of Doctor Pardeep Sharma relating to the examination of Varinder Rana.
- Ex.D-4** Original application moved by

Bhupinder Singh, SP, CBI for the release of two legs and the skull to Harnek Singh father of deceased Dilawar Singh.

Ex.D-5 Original application moved by ML Sharma, Joint Director of CBI with Director, P.G.I Chandigarh for the report as to the two legs and skull and other articles.

Ex.D-6 List of MLRs relating to the injured of the bomb blast.

Ex.D-7 Postmortem register of P.G.I Chandigarh.

Ex.D-8 Copies of the DDRs
Ex.D8/A &
Ex.D8/B

Ex.D-9 Original affidavit of Harjit Singh, s/o Bhagwan Singh which is also exhibited as Ex.PW241/4

77. In addition to the above mentioned documentary evidence, accused Navjot Singh also relied upon the following additional documents :

Ex.DX/1 Certified copy of judgment dated 17.5.2002 of Shri C.L.Mohal, then Chief Judicial Magistrate,

Chandigarh.

- Ex.DX/2** Certified copy of order dated 8.5.1995.
- Ex.DX/3** Certified copy of order of Shri Baldev Singh, Additional Sessions Judge, Chandigarh dated 29.5.1995 .
- Ex.DX/4** Certified copy of writ petition no.1032/1995 filed by accused Navjot Singh.
- Ex.DX/5** Certified copy of order dated 16.10.1995 passed in criminal writ petition no.1032/95.
- Ex.DX/6** Certified copy of order dated 5.4.2002 passed by Hon'ble High Court in Criminal Misc.No.7489-M of 2002
- Ex.DX/7** Copy of order dated 10.2.2000 passed by Punjab State, Human Rights Commission.
- Ex.DX/8** Certified copy of order dated 17.12.2002 passed by the Human Rights Commission.
- Ex.DH** Copy of the statement of Shri Rajesh

Malhotra s/o Bhagwan Dass recorded
by AG Kaul, Inspector, CBI.

Ex.PW237/D Copy of statement of C.Kuljit Singh
recorded by A.K.Ohri, Inspector,
CBI.

Ex.DBB Copy of the statement of PW
Tirlochan Singh son of Kartar Singh
recorded by Shri R.S.Dhankar.

Ex.DCC Copy of the statement of PW Subhash
Kumar Dutta recorded by G.N.Gupta,
DSP, CBI.

Ex.DY Copy of statement of PW Dilbagh
Singh recorded by RS. Dhankar on
25.10.1995

Ex.DZ Copy of the statement of Mohan Raj
Shekher recorded by RS.Dhankar, DSP,
CBI on 4.10.1995.

Ex.DZ/1 Copy of the statement of PW Revathi
Raj Shekhar, recorded by RS.Punia,
DSP on 4.9.1995.

78. I have heard Shri S.K.Saxena, Special
Public Prosecutor for the CBI, assisted by Shri
R.K.Handa and Shri Rajan Malhotra, Special Public

Prosecutors for the CBI and Shri D.S.Chimney and Shri A.S.Chahal Advocates for all the accused persons, who were also assisted by Shri R.C.Sharma and Shri S.S.Bawa Advocates, except accused Balwant Singh at length. I have also heard the case put forward by the accused Balwant Singh in person. Besides this, the entire record of the prosecution including oral and documentary evidence, was also perused with the assistance of both the parties.

PROSECUTION VERSION

79. Opening its case, Sh.S.N.Saxena, learned Special Public Prosecutor, assisted by Sh.R.K.Handa Special Public Prosecutor and Sh.Rajan Malhotra Advocate for the CBI argued that keeping in view the stand taken by one of the accused Balwant Singh, it is proved on the file that on 31.8.1995, deceased assassin Dilawar Singh along with accused Balwant Singh killed S.Beant Singh, then Chief Minister, Punjab, when assassin Dilawar Singh, being a human bomb exploded himself near the car of S.Beant Singh, then Chief Minister, Punjab at the porch of the VIP Gate at the Punjab & Haryana Civil Secretariat, Chandigarh. At the same time, it is also quite clear that this killing has taken place in consequences of a well planned conspiracy, therefore, the prosecution was required only to prove how this conspiracy was hatched and how the accused persons, put on trial in this case, along

with the accused, who have been declared proclaimed offenders, attributed for the due execution of the motive of the conspiracy and this fact is duly established on record in view of the voluminous evidence on the file, which is based on a complete chain of circumstantial evidence indicating that all the accused persons facing trial in this case were part and parcel of the conspiracy and as such, they are liable to be convicted for the offence for which they have been charge sheeted.

80. To substantiate their case, the learned Special Public Prosecutor submitted that in view of the testimony of PW-100, Dilbag Singh and keeping in view the documents, Ex.P137 to P150, it is proved on the file that Babbar Khalsa International, a Pakistan based terrorist group, headed by accused Wadhawa Singh and Mehal Singh, since proclaimed offenders, hatched this conspiracy to kill S.Beant Singh in order to achieve a goal of severance of a Sikh State called "Khalistan" out of India, by indulging in violent means and it is also proved on the file that the Babbar Khalsa International has also claimed the responsibility for the assassination of S.Beant Singh through various communications sent to various newspaper agencies.

81. It is also proved on the file that accused Mahal Singh and Wadhawa Singh (proclaimed

offenders) instigated Jagtar Singh Hawara, who was trained in Pakistan and they hatched a conspiracy for the killing of S.Beant Singh and accused Jagtar Singh Hawara was sent to India with an instigation that S.Beant Singh, the Chief Minister, Punjab had usurped the power after 1992 election in the State of Punjab and is responsible for committing indiscriminate atrocities on the innocent Sikhs in the State of Punjab and other part of the country and as such, he should be killed and accordingly Jagtar Singh Hawara instigated accused Gurmeet Singh, assassin Dilawar Singh, accused Lakhwinder Singh and accused Balwant Singh, who all were good friends and all of them then included the remaining accused persons in the conspiracy as accused Paramjit Singh facing trial separately, accused Jagtar Singh Tara (since proclaimed offender), accused Jagroop Singh (since proclaimed offender) and accused Navjot Singh, who were the members of the Akhand Kirtni Jatha also intend to kill S.Beant Singh, Chief Minister, Punjab.

82. Accordingly during the period of November 1994 to August 1995, all these accused persons hatched this conspiracy at various places in India and various parts of Pakistan and this fact is duly proved on the file in view of the testimony of PW35 and PW-38, who both proved that within hours of the killing of S.Beant Singh ex-Chief Minister, Punjab, fax messages mark AAA, DDD and EEE were received by

various newspapers, copies of which are AAA/1, DDD/1 and EEE/1 and in all these documents, the Babbar Khalsa International has owned the responsibility for killing S.Beant Singh.

83. Not only this, in one of the document, Ex.P-150 which is a poster published by the Babbar Khalsa International, assassin Dilawar Singh deceased has been shown as a martyr, who has killed S.Beant Singh by working as a human bomb as admitted by accused Balwant Singh repeatedly during the trial as well as in his statement under section 313 Cr.PC. Thus all these facts and circumstances clearly show that it is established beyond doubt that it was the Babbar Khalsa International, who had planned and conspired to kill S.Beant Singh and they did so with the active connivance and help of all the accused persons, who were facing trial in this case.

84. He further submitted that from the evidence led by the prosecution, it is proved that as per the motivation of accused Wadhawa Singh, (since proclaimed offender), accused Jagtar Singh Hawara, motivated some persons to come forward to act as a human bomb for the killing of S.Beant Singh ex-Chief Minister, Punjab and as per that motivation, assassin Dilawar Singh offered himself for this purpose. In July 1995, accused Jagtar Singh Hawara contacted accused Shamsher Singh and

Paramjit Singh, who in turn introduced accused Jagtar Singh Tara (since proclaimed offender) to accused Jagtar Singh Hawara in New Delhi. Accused Jagtar Singh Hawara assured the availability of arms and ammunitions and he, accordingly, with the help of accused Shamsher Singh brought the RDX from his village near Ajnala close to the Indo-Pak border in truck no. PB-12-A-7947 and the same was kept in the house of accused Shamsher Singh and some part of the RDX was kept concealed in the house of accused Nasib Singh in Village Jhingran Kalan and accused Nasib Singh kept concealed the RDX in his house fully knowing the conspiracy. Thereafter accused Jagtar Singh Tara and Jagtar Singh Hawara purchased a gray coloured Ambassador car no. DBA-9598, Ex.P76 from PW-32, S.K.Dutta and then with the help of accused Paramjit Singh, the said car was brought to Patiala.

85 Learned Special Public Prosecutor Mr.Saxena further submitted that on 25.8.1995, a meeting was held in Gurudwara Dukh Niwaran, Patiala which was attended by accused Jagtar Singh Hawara, Jagtar Singh Tara, Paramjit Singh, Balwant Singh and assassin Dilawar Singh, where a final plan to kill S.Beant Singh by human bomb was prepared and thereafter all of them reached Village Jhigran Kalan from where some part of the RDX was brought from the house of accused Nasib Singh and then all the five accused persons reached house no.981,

Phase IV, Mohali which was of their co-accused Gurmeet Singh. Thereafter car no. DBA-9598 was got painted in off-white colour to give it a look of an official car. In the meantime, accused Lakhwinder Singh also joined them and on the night of 28.8.1995 in the room of accused Gurmeet Singh, RDX was mixed with the other materials for the purpose of making a belt bomb and the circuit of the belt bomb were installed by accused Gurmeet Singh and after taking the delivery of the car, they decided to explode S.Beant Singh on 30.8.1995.

86. On 30.8.1995, when they reached the Punjab & Haryana Civil Secretariat, Chandigarh, it was found that S.Beant Singh ex-Chief Minister, Punjab (deceased) had already left the office, as a result assassin Dilawar Singh (deceased) and accused Balwant Singh, who had went to Civil Secretariat to explode the bomb, returned back and then they went to the house no.3031/1, Sector 45, Chandigarh, which belongs to Chamkaur Singh brother of deceased assassin Dilawar Singh and stayed there for the whole night.

87. On the next morning while leaving the house of Chamkaur Singh, accused assassin Dilawar Singh told Chamkaur Singh that they are going to do some big and therefore, he (Chamkaur Singh) should go away otherwise the police may torture and kill him. On 31.8.1995, accused assassin Dilawar Singh

and accused Balwant Singh again started for the Civil Secretariat where accused Lakhwinder Singh, Gurmeet Singh and Jagtar Singh Tara joined them. Thereafter accused Jagtar Singh Tara and Balwant Singh went to the Civil Secretariat on a scooter whereas the remaining accused persons came to the house of Gurmeet Singh in Phase IV, Mohali. After coming to know that S.Beant Singh (deceased) had reached the Secretariat, accused Jagtar Singh Tara and Balwant Singh reached house no.981, Phase IV, Mohali along with car no. DBA-9598. After that, assassin Dilawar Singh was armed with the belt bomb and he left the house of accused Gurmeet Singh in car no. DBA-9598. Accused Balwant Singh followed them on scooter No. PB-11-1955.

88. After reaching the Secretariat, they parked the car at some distance from the VIP Gate of the Secretariat and accused Balwant Singh also reached there and joined them. Accused Jagtar Singh Tara then left that place. At about 5.10 p.m., when S.Beant Singh ex-Chief Minister, Punjab came down and was in the process of occupying his car No. PB-08-3469, assassin Dilawar Singh (deceased) reached near him and get him exploded resulting into a huge blast as a result of which 15 other persons along with S.Beant Singh ex-Chief Minister, Punjab were died and as many as 15 other persons were injured.

89. Learned Public Prosecutor further

submitted that immediately after the bomb blast the Police reached at the spot and Pw-240, Nanha Ram, then Inspector, SHO, P.S. North, inspected the spot and found that number of dead bodies were found scattered all over the place of occurrence including the dead body of Sardar Beant Singh near the back seat of the Car bearing registration No. PB-08-3469 and there was huge damage caused to the furniture, fixtures and the building of the VIP lounge.

90. Accordingly, he took the photographs of the scene of occurrence with the help of some experts. On further inspection, he found two legs and a skull, which was later on identified to be the remnants of the body parts of deceased Dilawar Singh as mentioned above. Thereafter further investigations of the case were taken over by the CBI from the Chandigarh Police. When those two legs and skull were examined by PW-6, Doctor Inderjit Dewan, he opined that both these legs and skull were of the same individual and they had been severed as a result of the explosive device but he had advised for DNA test for its identity. Later on Harnek Singh, father of assassin Dilawar Singh (deceased), identified the legs and the skull as that of his son Dilawar Singh (deceased) but to confirm the identity, the DNA test was done by Pw-245, Lalji Singh of the Centre for Cellular and Molecular Biology, Hyderabad and it was established

that the two legs and the skull were of the same person and that person was deceased Dilawar Singh.

91. Earlier when the place of occurrence was inspected by PW-240, Inspector Nanha Ram, he found an abandoned car bearing No. DBA-9598. Later on this car was searched by the CBI team as well as by the finger print expert team. On examination of the car, a chit, Ex.PW60/A and a 9 volt battery, Ex.P153 was recovered. In the meantime, PW-51, Surinder Kumar after seeing the photograph of car No. DBA-9598 in the newspaper approached the police and disclosed the police that he had painted the said car on the asking of accused Lakhwinder Singh. Side by side, PW-99, Chamkaur Singh brother of assassin Dilawar Singh also contacted the police and disclosed that his brother was involved in this killing. Accordingly on 5.9.1995 accused Lakhwinder Singh was arrested along with scooter No. PCP-2085, Ex.P80.

92. PW-114, Dalbir Singh alias Maula also saw the photograph of the car and disclosed that the said car was got painted by accused Lakhwinder Singh from PW-51, Surinder Sharma. On the search of accused Lakhwinder Singh, some documents having his handwriting and signatures were also recovered. PW-114, Dalbir Singh alias Maula also disclosed that after this incident, accused Lakhwinder Singh also contacted him and disclosed that he is involved in

the killing of S.Beant Singh along with other accused persons. After taking the specimen handwriting and finger print of accused Lakhwinder Singh when the same were got compared with the disputed handwriting on the documents and the chit recovered from the car, it was found in the hands of accused Lakhwinder Singh. Similarly the finger prints taken from the car also matched with the finger prints of accused Lakhwinder Singh. Thereafter on the disclosure of accused Lakhwinder Singh, accused Gurmeet Singh was arrested on 5.9.1995 in the presence of Surinder Kumar, PW-51 and on the personal search of accused Lakhwinder Singh, a slip containing the name of Lakhwinder Singh and the phone number, Ex.PW50/3 was also recovered and the same was also found in the hands of accused Lakhwinder Singh.

93. During the interrogation of accused Gurmeet Singh, he suffered a disclosure statement, Ex.PW68/A wherein he admitted the factum of conspiracy. As per his disclosure statement, his room in house no.981, Phase IV, Mohali was searched from which newspapers, card board and other incriminating articles were recovered as per memo, Ex.PW68/B, in the presence of PW-68, Purnan Chand and PW-70, Parnab Sain. The said articles were examined by PW-165, Roop Singh, a Ballistic Expert and on examination, traces of high explosion of RDX were found on the same. Similarly PW-160, RS Verma,

an expert of the CFSL, Chandigarh, who was also present at the time of search, also confirmed the traces of RDX on the incriminating articles recovered from the room of accused Gurmeet Singh.

94. He further submitted that after arrest of accused Lakhwinder Singh and Gurmeet Singh, on 13.9.1995, accused Jagtar Singh Tara was also arrested in Delhi and he suffered a disclosure statement in which he disclosed the entire planning of conspiracy leading to the killing of Beant Singh and other persons. Accused Balwant Singh escaped from the Secretariat after the bomb blast and reached Patiala where he parked his Scooter No. PB-11-1955 with Prem Singh of Pritam Singh, Cycle stand at Bus Stand, Patiala from where he reached the house of his foster father Dilawar Singh and disclosed him about the conspiracy and the killing of Beant Singh. On 10.9.1995 the Scooter of Balwant Singh was recovered from the Pritam Cycle stand Patiala in the presence of PW-72, Prem Singh and PW-73, Kirat Mohinder Singh and on the search of the Scooter belt made of cloth making for belt bomb was also recovered and accordingly the scooter, helmet and belt was taken into possession.

95. As per the facts disclosed by accused Jagtar Singh Tara, accused Navjot Singh was also arrested and thereafter on 18.9.1995 accused Nasib Singh was arrested from his Village Jhingran Kalan

and he also suffered a disclosure statement, Ex.PW81/1, regarding concealment of RDX with him by accused Jagtar Singh Hawara and thereafter 13.700gm, Ex.P99 RDX was recovered in consequences of that disclosure statement in the presence of PW-81, Raghubir Singh, Ex-Sarpanch of Village Jhingran Kalan vide recovery memo, Ex.PW81/2, by PW-243, A.P.Singh, Deputy Superintendent, C.B.I. Similarly during the search of the house of accused Navjot Singh some incriminating writings were recovered showing that he had also helped the accused persons in killing of Beant Singh.

96. After the arrest of accused Balwant Singh, on search of his house some incriminating documents showing his involvement in this conspiracy were also recovered. Not even this accused Balwant Singh made a confession before the PW-65, Sh.V.K.Maheshwari, Metropolitan Magistrate, Delhi, Ex.PW65/F, Wherein he disclosed as to how he and his co-accused persons conspired and killed Beant Singh. Not even this during the interrogation accused Balwant Singh suffered different disclosure statement and identified the places from where he and Dilawar Singh along with Jagtar Singh Hawara got the police uniforms and two belts stitched and purchased other material used for the preparation of belt bomb and thereafter he identified all those places.

97. Similarly, as per his disclosure statements he had also identified all the places where he stayed from 31.8.1995 till his arrest. The chance prints lifted from Car bearing No. DBA-9598 used in the commission of the crime were got compared with the specimen finger prints of accused persons Balwant Singh and Lakhwinder Singh and some of those has been found to be that of both these accused persons.

98. Learned Public Prosecutor, as such, urged that the prosecution has led sufficient circumstantial evidence on the file which completes a chain of events which shows that all the accused persons were the part and parcel of this conspiracy and killed Beant Singh and 17 other persons with help of assassin Dilawar Singh, who acted as human bomb.

99. To substantiate its case, the learned Public Prosecutor submitted that as stated earlier, immediately after the blast Babbar Khalsa International has owned the responsibility of killing Beant Singh and during the investigations, C.B.I collected sufficient evidence on the basis of the confessions made by the accused persons and the disclosure statement made by the accused persons, which leads to recovery of incriminating articles and the material facts, which points out that all the accused persons in furtherance of their

conspiracy did different acts at different point of time with sole motive to kill Beant Singh.

100. He further submitted that the most material evidence of prosecution against the accused persons is the confession made by accused Balwant Singh, Ex.PW65/F, accused Jagtar Singh Tara, Ex.PW86/6 and accused Shamsheer Singh, Ex.PW103/G and these confessions made by the co-accused are admissible against all the accused persons as it is a case of conspiracy involving multifarious acts, under the provisions of Section 10 and 30 of the Indian Evidence Act. He further submitted that although the accused persons have retracted from their confession during the trial but it is proved on the file that the confessions made by all these accused persons were not only voluntarily made but those were also without any fear, threat or pressure or coercion etc. and those are admissible in evidence as these are corroborated from the circumstantial evidence brought on the file on all broad facts and as such there is no justifiable reason to retract from the same and the retraction is also not supported by any justifiable reason and it is also not made within the reasonable time of making of the same.

101. To substantiate this plea further, he submitted that the confession of the accused Balwant Singh was recorded on 23.01.1996 but he

moved an application on 20.2.1996 to retract from the same alleging that he never made any such confession. However, the copy of the challan was already with him and he was knowing about the making of the confession and as such he failed to explain why he is retracting from the same specially when he has nowhere alleged that any inducement, any pressure was exerted upon him to get the confessional statement. PW-65, V.K.Maheshwari, who recorded the confession of accused Balwant Singh, has categorically deposed that he recorded the confession of the accused Balwant Singh, after satisfying himself that Balwant Singh is making the same without any threat, promise or inducement etc. Not even this, despite opportunity being granted, accused Balwant Singh has not cross examined this witness on any aspect of his making of the confession and the facts disclosed in his confession.

102. At the same time, there is sufficient incriminating evidence which proves the previous and subsequent act and conduct of accused Balwant Singh leading to the commission of this crime as disclosed by him in his confessional statement, Ex.PW65/F. Not even this when question no.249 and 250 was put to accused Balwant Singh regarding making of confessional statements, Ex.PW65/F, he alleged that he do not remember and in question no.253 he admitted that in his confessional

statement, Ex.PW65/F he disclosed that he had adopted Jaswant Singh and his daughter Kamaldeep Kaur as his father and sister. This fact further shows that making of confessional statement by this accused is not disputed.

103. At the same time, it is further proved on the file that accused Balwant Singh had admitted this crime by way of extra judicial confession before PW-94, Gurpreet Singh, PW-95, Tejinder Pal Singh and PW- 102, Kuljit Singh and all these three witnesses have categorically proved this fact. All these witnesses were previously known to accused Balwant Singh and there is no enmity or motive attributed qua these witnesses to depose falsely. As such this fact further proves that the confessional statement of accused Balwant Singh voluntarily made and legally recorded and thus admissible in evidence not only against accused Balwant Singh but also against his co accused persons, as per law laid down in **2004 (3) RCR Criminal 353**, and even this extra judicial confession are sufficient to link the accused Balwant Singh and to prove the confession made by him which further proves the link of the remaining accused persons.

104. Similarly, the accused Jagtar Singh Tara (since proclaimed offender) has made a confessional statement, Ex.PW86/G on 22.9.1995 before PW-86,

Balbir Singh, then Special Magistrate, CBI, Patiala and till 6.5.1999 he never moved an application for retracting from the same during this period of four year and for the first time, he moved an application for retracting from his confession only on 6.5.1999. However, before this accused Jagtar Singh Tara moved an application 2.9.1998 in which he admitted his guilt. Even when PW-86, Balbir Singh was cross examined by Jagtar Singh Tara a suggestion was put to him that although accused Jagtar Singh Tara had made a confessional statement but it was not recorded in the manner disclosed by him and this fact alone shows that the making of disclosure statement by accused Jagtar Singh Tara is duly proved on the file and there is nothing on the file to say that it was legally retracted or not admissible.

105. Not even this, when PW-86 was cross examined by Jagtar Singh Tara he partly admitted the making of the confession and as such it is proved on the file that confession made by accused Jagtar Singh Tara was also voluntarily made and its retraction at the later stage is of no consequence and it also proved the role of remaining accused persons as per the provisions of Section 30 of the Indian Evidence Act.

106. In the same manner, the confession of accused Shamsher Singh, recorded by PW-103, Dinesh

Kumar Sharma, Metropolitan Magistrate, Patiala Courts House, New Delhi, on 16.12.1995, Ex.PW103/G is also duly proved on the file and even accused Shamsher Singh has made extra judicial confession before PW-114, Dalbir Singh @ Maulla admitting the factum of conspiracy by his co-accused persons leading to the killing of Beant Singh. Although, this accused has made a confession on 16.12.1995 and thereafter remanded to judicial custody but he never moved any application to retract from his confession till 20.2.1996, when for the first time he moved an application for retraction. However, there is nothing on the file to justify the reasons for retracting from the confession by this accused.

107. At the same time, when PW-103, Dinesh Kumar Sharma, who has recorded the confession of this accused was cross examined and a suggestion was put to him that confessional statement of this accused has been made by him, under pressure and after wrongful confinement. However, he has denied the suggestion in clear words and reiterated that he was thoroughly satisfied after questioning the accused that he is willing to make confession voluntarily without any pressure or threat etc.

108. On the contrary, accused Shamsher Singh disclosed him that he is religious person and he came in contact with the terrorists as he was also under the threat of life by the other terrorist

organization and whatever has been done by him, it was due to compulsion and he wants to make a statement so that true story should come out and when the accused was questioned that he can disclose if any threat etc. has been given by the CBI, the accused disclosed that he has not been maltreated by CBI officials nor he is under any threat force and coercion and making the confession voluntarily and after granting some time to the accused to think over, the statement was recorded at about 3.30 p.m., although he was produced before PW-103 at 11.30 a.m. As such, there is no ground to disbelieve the confession made by this accused, which is further corroborated on all material aspect of this case by way of circumstantial evidence, extra judicial confession made before PW-114 and the act and conduct of the accused before and after the crime. As such, as per the law laid down by the Hon'ble Apex Court **in AIR 2004, Supreme Court, page 4197**, these confessions are sufficient circumstance to prove the case of the prosecution.

109. To further fortify his case, he submitted that there is sufficient evidence on the file which proves that accused Dilawar Singh, Balwant Singh, Lakhwinder Singh and Gurmeet Singh were close friends and were associated with each other and it has been categorically proved by PW-54, Deepinder Singh, PW-95, Tejinder Pal Singh, PW-114, Dalbir Singh @ Maulla and PW-111, Mohan Pal, that all

these accused persons were knowing each other and they conspired together to kill Beant Singh as alleged by the prosecution. Not even this, all the accused persons involved in the conspiracy were identified by all the material witnesses through photographs, which they themselves identified from the bunch of photographs shown to them and this fact further proves the involvement of all the accused persons in this conspiracy.

110. He further submitted that at the same time, the prosecution has collected sufficient circumstantial evidence as per overt acts and acts of omission and commission done by all the accused persons prior to the conspiracy including the preparation, the acts done during the execution of the conspiracy and the acts of omissions and commissions done after the commission of the crime till their arrest and the recoveries of the incriminating articles and material facts made after their arrest and this circumstantial chain clearly links the role of each of the accused persons with the conspiracy.

111. He further submitted that the prosecution has brought sufficient evidence on the file which proves that after the commission of the offence accused Jagtar Singh Hawara and Balwant Singh absconded and stayed at different places with false identities and false names in order to avoid

arrest and this clinching fact also links these accused persons with the factum of conspiracy and its execution and their involvement in the execution of the same and this circumstance clinches the entire issue.

112. He further submitted that in view of the testimony of PW-76, Amarjit Singh, it is proved on the file that the accused Jagtar Singh Hawara, Balwant Singh and Dilawar Singh got stitched two uniforms one each, for Dilawar Singh & Balwant Singh as per bill, Ex.PW76/1-A. Similarly, PW-75, Jasbir Singh, also proved that on 24.8.1995 accused Jagtar Singh Hawara along with Balwant Singh came to his shop and asked for stitching of one belt and pent for both of them as per the measurement given by them and accused Jagtar Singh Hawara also gave a sketch of the belt, which was later on recovered from his possession as per his disclosure statement. It is also proved on the file that on 25.8.1995 accused Balwant Singh took the delivery of one of the belts and ordered for another belt of green colour and he accordingly stitched the second belt which accused Balwant Singh took from him and this belt was later on recovered from the dickey of the Scooter of Balwant Singh and identified by PW-75, Jasbir Singh and all other witnesses as Ex.P96. Both these witnesses have identified accused Balwant Singh & Jagtar Singh Hawara in the court and also the photographs of deceased Dilawar

Singh.

113. To further link the story, learned Public Prosecutor submitted that it has been categorically stated by PW-218, Harkesh, one of the Ranger of National Security Guard that at the time of this occurrence he found one person in the police uniform going towards the car of C.M and before he could understand there was a blast.

114. Learned Public Prosecutor further submitted that it is also proved on the file that there was definite motive with the accused persons to kill the deceased Beant Singh. To substantiate this plea he submitted that as submitted by the accused Balwant Singh in his written explanation to the case of the prosecution, all the accused persons were having perception on the instigation of Wadhawa Singh and Mehal Singh and Jagtar Singh Hawara that Beant Singh has usurped the power after 1992 election in the state of Punjab despite the boycott of these election by the main political parties and after becoming Chief Minister he indulged in indiscriminate atrocities against the innocent Sikhs by killing, illegal custodies, tortures, elimination and false encounter and thereby indulged in activities against the Sikh religion and started claiming himself to be Ambassador of Peace and incarnation of Guru Gobind Singh and Lord Rama.

115. All the accused persons were not happy with this role of Beant Singh and they think him enemy no.1 of the Sikh community and the main hurdle for the creation of Khalistan and to achieve this motive, all of them on the instigation of Internationally sponsored Terrorist Groups, specially Babbar Khalsa International, which were further helped by some International Countries, hatched a conspiracy and helped each other by contributing his role, as found during the investigations and this fact is a strong circumstance which fortify the case of the prosecution.

116. Not even this, from the documents, Ex.P137 to Ex.P150, it is proved that Babbar Khalsa International has owned the responsibility for killing Beant Singh within hours of this bomb blast and they also published a pamphlet/poster Ex.P150 paying homage to assassin Dilawar Singh for killing Beant Singh and declaring him as Martyr and this fact further proved on the file from the fax message mark AAA, DDD and EEE, as proved on the file by PW-35 and PW-38.

117. He further submitted that there is sufficient evidence on the file which further proved that all the accused persons facing trial in this case were known to each other and were

associated with each other from a very long time. First of all PW-99, Chamkaur Singh, elder brother of deceased Dilawar Singh, had deposed that accused Balwant Singh and Dilawar Singh were close friends and accused Lakhwinder Singh & Gurmeet Singh were residents of same street and all were known to each other. This very fact is also corroborated by PW-54, Deepinder Mehta, PW-95, Tejinder Pal Singh, PW-113, Surinder Singh, PW-114, Dalbir Singh @ Maulla and PW-111, Mohan Pal and it is also undisputed case of accused Lakhwinder Singh & Gurmeet Singh that they are known to each other and residents of same street. Thus, the association of accused persons with each other further shows that they all were having confidence with each other and they hatched this conspiracy accordingly.

118. Learned Public Prosecutor further submitted that one more material circumstance which links the accused persons with this conspiracy is that Scooter No. PB-11-1955, Exhibited Ex.P-77, is proved to be owned by accused Balwant Singh and it is proved that this scooter was used by accused Balwant Singh and his co accused during and prior to the conspiracy and even after the blast accused Balwant Singh escaped to Patiala on the Scooter. To substantiate this plea, he submitted that in view of testimony of PW-42, Amar Singh, it is proved on the file that this witness has purchased this Scooter from its original owner Major Singh and

then sold it to PW-34, Kamalpreet Singh Walia as per the documents Ex.PW34/1 to Ex.PW34/4 and also handed over the registration of the scooter to him and further PW-34, has also deposed that after purchasing the Scooter from PW-42 he sold the same to deceased Dilawar Singh through a agent Vipin Kumar and he handed over the affidavit executed by registered owner Amar Singh, Ex.PW34/1 along with other documents to Dilawar Singh and he has also identified the photographs of deceased Dilawar Singh mark YY. Even PW-54, Deepinder Mehta as supported the version of PW-34 and deposed that the Scooter in question was purchased by deceased Dilawar Singh.

119. One more circumstance which links accused Jagtar Singh Hawara and Balwant Singh and the Scooter with this case is that PW-49, ASI Arun Kumar has proved that on 24.8.1995 he challaned the Scooter when it was being driven by accused Balwant Singh with one pillion rider Jagtar Singh Hawara, as per the challan chit, Ex.PW49/1 and the RC of the Scooter was taken into possession and he had also identified the photographs of accused Jagtar Singh Hawara and Balwant Singh, Ex.PW49/3 and Ex.PW49/4 and have also identified both these accused persons in the court. The testimony of all these four witnesses remained unrebutted and it proved beyond doubt that the Scooter N.PB-11-1955, Ex.P77 was in possession of accused Balwant Singh

and Dilawar Singh and on 24.8.1995 Balwant Singh and Jagtar Singh Hawara were found together at Chandigarh.

120. Above all, from the testimony of PW-72, Prem Singh and PW-73, Kirat Mohinder Singh, it is further proved on the file that on 31.8.1995 accused Balwant Singh after the blast reached Patiala on the Scooter and parked the same in Pritam Cycle Stand, Bus Stand Patiala, owned by PW-73, in the presence of PW-72, Prem Singh along with helmet, Ex.P94 and later on 10.9.1995 the Scooter was recovered from Pritam Cycle Stand in the presence of both these witnesses and when the dickey of scooter was searched a cloth belt, Ex.P97, was recovered from the same and same was taken into possession as per the recovery memo Ex.P72/2. Similarly both these witnesses identified the photographs of accused Balwant Singh from a bunch of photographs which is mark QQQQ and PW-72. had also identified accused Balwant Singh in the court. He had also identified the receipt of the Scooter, Ex.P72/1 issued by him to the accused Balwant Singh and from the testimony of these two witnesses, it is proved that this Scooter belongs to Balwant Singh and Dilawar Singh and was used in the commission of the crime.

121. Similarly, another Scooter PCP-2085, Ex.P80, which was owned by accused Lakhwinder Singh

is also proved to have been used in the commission of this crime. PW-54, Deepinder Mehta has categorically deposed that he was knowing accused Lakhwinder Singh, Balwant Singh, Gurmeet Singh and Dilawar Singh being residents of his street in Patiala and he purchased the scooter No. PCP-2085 from one Harjit Singh as per the affidavit, Ex.D-9 and sold the same to accused Lakhwinder Singh as per the receipt, Ex.PW54/1. It is also proved on the file when accused Lakhwinder Singh was arrested this scooter was also recovered from him and even PW-51, Surinder Sharma, a painter of Sector 7 corroborated this fact. Even PW-114, Dalbir Singh @ Maulla, who was friend of accused Lakhwinder Singh, also corroborated the stand of PW-54 and he also corroborated that this scooter has been purchased by accused Lakhwinder Singh in the commission of crime.

122. The other circumstance, which proved the use of Car No. DBA-9598, Ex.P76 by the accused persons, is proved from the testimony of PW-51, who deposed that on 26.8.1995 accused Lakhwinder Singh came to his shop with two other accused persons along with the car in question having steel grey colour and requested him to paint the car into off white colour and hand over the same by 29.8.1995 and accordingly after painting the car on 29.8.1995, one person with trimmed beard came to his shop along with Lakhwinder Singh for taking the

delivery of the car but PW-51 ask them to take the delivery of car on 30.8.1995 and thereafter he handed over the car to them and before that he also got the number plates repainted from PW-54, Tota Ram. He had also identified the car as well as accused Lakhwinder Singh in the court and also deposed that accused Lakhwinder Singh was also arrested in his presence. He also identified the photo graph of deceased Dilawar Singh mark YY-4, as the person who accompanied Lakhwinder Singh, on all the three days. He also identified the photographs of accused Gurmeet Singh mark SSS.

123. Even PW-114, Dalbir Singh @ Maulla had supported this stand and deposed that he knows accused Lakhwinder Singh, Dilawar Singh and Balwant Singh and on 30.8.1995 on the request of Lakhwinder Singh, he took the accused Balwant Singh to the shop of PW-51, Surinder Sharma, where accused Dialwar Singh was already present and admitted that they have come to take the delivery of the car and he further deposed that on the day of bomb blast accused Lakhwinder Singh and Balwant Singh were present in Civil Secretariat and after the blast accused Lakhwinder Singh met him near the Rock garden and admitted this occurrence.

124. Thus this evidence proves that the car in question was used by the accused persons in the commission of the crime and after the recovery of

the car the chance finger prints lifted from the car matches with the finger print of accused Balwant Singh and Lakhwinder Singh. The traces of RDX were found from all the articles recovered from the spot and as per the opinion of the expert witness, it is proved that a belt bomb was used by deceased Dilawar Singh in which RDX and other material was packed and exploded to kill deceased Beant Singh. At the same time no motive or enmity has been attributed qua the witnesses of prosecution on this aspect. As such, all the circumstantial evidence completes the chain showing the role played by each and every accused persons in the execution of the conspiracy.

125. Lastly, learned Public Prosecutor explained the role played by each and every accused persons in groups with each other as well as individually before the conspiracy, after the execution of the conspiracy and the incriminating articles recovered and the facts disclosed by the accused persons, after their arrest as per their confessions and disclosure statement and concluded that there is no scope of doubt regarding the genesis of occurrence that it was a bomb blast caused by the deceased assassin Dilawar Singh being a human bomb resulting into killing of Beant Singh and 16 other persons and all this was done by all the accused persons in conspiracy with each other.

126. To substantiate this part, he submitted that after the arrest of accused Jagtar Singh Tara, it was disclosed by him that accused Navjot Singh was also involved in this conspiracy as RDX brought by Jagtar Singh Hawara, was kept in the house of accused Navjot Singh and after the arrest of accused Navjot Singh, when the search of house of accused Navjot Singh was conducted by PW-244, R.S.Dhankar, documents Ex.PW91/23, Ex.P91/25, Ex.PW91/27, Ex.PW91/29 and Ex.PW91/46 were recovered and after comparing the hand writing of these documents, PW-166, Tilak Raj Nehra held the same to be in the hand writing of accused Navjot Singh and these documents clearly shows that accused Navjot Singh was part and parcel of the conspiracy being a member of Anand Kirtani Jatha.

127. Similarly the accused Jagtar Singh Tara suffered a disclosure statement, Ex.PW80/1 disclosing that on 25.8.1995 he along with Jagtar Singh Hawara along with three other persons went to Village Jhingran Kalan and then to the house of accused Nasib Singh and accused Jagtar Singh Hawara brought two bags of RDX from the house of accused Nasib Singh and also disclosed that some more RDX is lying in the house of accused Nasib Singh, who is also part and partcel of this conspiracy and after that he identified the house of accused Nasib Singh and then accused Nasib Singh was also arrested and he also suffered a disclosure

statement, Ex.P81/1 in the presence of PW-81, Raghubir Singh, Ex Sarpanch of Village Jhingran Kalan and admitted that the accused Jagtar Singh Hawara kept the RDX in his house and he was knowing that it was being used for the murder of Beant Singh and thereafter as per his disclosure statement, accused Nasib Singh himself brought one bag from the cattle fodder and on search 13.700 kg. RDX was recovered from that bag which was taken into possession vide recovery memo, Ex.PW81/2 after converting the same into sealed parcel.

128. Learned Public Prosecutor further submitted that although PW-81, Raghubir Singh has been won over by the accused persons but he still deposed that the RDX was recovered from the house of Nasib Singh as per the recovery memo, Ex.PW81/2 and it was sealed and packed into a bag in his presence. He identified that bag as Ex.P98 and the RDX as Ex.P99 and thus the factum of recovery of RDX is duly proved and links the accused, Nasib Singh with the conspiracy.

129. Apart from this, it is also proved on the file that accused Wadhawa Singh and Mehal Singh instigated accused Jagtar Singh Hawara to kill Beant Singh and accused Balwant Singh & Dilawar Singh were also decided to kill Beant Singh because of his alleged atrocities. Accused Harjit Singh, since absconding, met accused Balwant Singh

some where in the month of March or April, 1995 and asked Balwant Singh to kill Beant Singh with the promise of all type of help. In the month of June, 1995 Harjit Singh called Balwant Singh on the telephone of Bhushan Sirhandi and asked him to meet a person at Gurduwara Seesh Ganj in this regard and thereafter accused Balwant Singh met that person, who was later on identified as Jagtar Singh Hawara and both of them went to Guest House at Ghaziabad and discussed the plan. Thereafter accused Jagtar Singh Hawara and Balwant Singh planned to kill Beant Singh by exploding a belt bomb and accused Dilawar Singh offered himself as human bomb. Thereafter accused Jagtar Singh Hawara and Balwant Singh got stitched belt bomb and then they met Paramjit Singh @ Kala and Jagtar Singh Tara and they all met at Gurudwara Dukh Niwaran Patiala, where Dilawar also joined them.

130. Accused Jagtar Singh Tara and Jagtar Singh Hawara procured a Car No. DBA-9598 and brought it to Patiala and then they collected explosive from Village Jhingran Kalana and came to Mohali. Accused Balwant Singh and Dilawar Singh went to Patiala and got stitched two police uniforms and took the delivery of belt. The colour of the car was got changed from Grey to White by Jagtar Singh Hawara with the help of accused Lakhwinder Singh, there after all of them went to the room of Gurmeet Singh. On the intervening night of 28/29.8.1995 a

final plan to explode Beant Singh by a human bomb was prepared by the accused Dilawar Singh, Balwant Singh, Lakhwinder Singh, Jagtar Singh Hawara, Paramjit Singh, Jagtar Singh Tara and an attempt was also made on 30.8.1995 but it could not succeed as Beant Singh had already left Secretariat. Ultimately on 31.8.1995 again deceased Dilawar Singh was loaded with belt bomb by Balwant Singh & Jagtar Singh Tara and electric circuit was completed by accused Gurmeet Singh and then Jagtar Singh Tara and Dilawar Singh left in car No-DBA 9598, Ex.76 and reached Secretariat. After some time accused Balwant Singh reached there on his Scooter and then as per the plan Dilawar Singh exploded himself near to the Car of Beant Singh killing him and 16 other persons and thus it is proved on the file that all the accused persons who were part and parcel of this conspiracy committed this crime on the instigation of International Terrorist Organizations, specially Babbar Khalsa International and immediately after the blast Babbar Khalsa International also owned the responsibility. With these submission he submitted that the case of prosecution is proved against all the accused persons and they be convicted accordingly.

131. The prosecution has also relied upon various authorities in support of the proposition of law applicable to the case in hand which will be discussed at the appropriate time.

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DEFENCE VERSION

132. While challenging the entire case of the prosecution, Shri DS.Chimney learned defence counsel, assisted by a team of lawyers and Shri A.S.Chahal Advocate, vehemently submitted that the entire story of the prosecution leading to the prosecution of the accused persons is based on suppression of true genesis of the occurrence by concealing the material evidence available at the spot by way of deliberate acts of omission and commission to frame the accused persons and there are sufficient circumstances on the file which shows that this case was investigated by the CBI after the arrest of the accused persons and a cock and bull story was concocted by collecting evidence by going backward to link the accused persons with this crime. Thus the CBI has conducted a tainted and bias investigation and arrested and challaned the accused persons despite the fact that there was no legal evidence against any of them.

133. To substantiate his case, he submitted that this case can be termed as a case of no investigations or at the most a badly investigated case from its very beginning till its end and all the material aspects of the case available at the spot after the crime were suppressed.

134. To support this theory he submitted that there are hundreds of circumstances which shows that this case was never investigated in the manner it was required, to go to the root of the blast and the CBI has worked as contract Bureau of Investigations and made a half cooked, half raw story leading no where. In support of this, he at the very out set of his arguments, pointed out the following circumstances:-

(a) Despite the fact that it is admitted case of the prosecution that at least 16 vehicles were damaged, including the three cars of the carcade of the CM and his escort vehicles but no report of any damage to any of the vehicles were got prepared from any expert or by any Police Officer.

(b) There is no report on the file to show the magnitude of the blast and damage, to show how the bomb caused damaged to other vehicles and how it was possible.

(c) Despite the fact that it is admitted by the CBI that the investigations of this case were taken over by it from Chandigarh Police on 1.9.1995, there is no record on the file to show that what was done by the CBI Authorities on 1.9.1995.

(d) Despite the fact that it is admitted case of the CBI that a spot inspection cum seizure memo was prepared on 1.9.1995 but the same has not been made part of the record for the reasons best known to the prosecuting agency and there is no explanation in this regard also.

(e) PW-165, Roop Singh, a Ballistics Expert of the CFSL, who was one of the member of the team of Expert, who visited the spot on 1.9.1995, admitted that he directed the investigating officer to lift certain incriminating articles from the spot and those were also picked up but none of those articles were made part of the record and there is no explanation as to where those articles had gone. It is further admitted by PW-165 that the wind screen of the car of CM was blown off and was examined by him and report in this regard was also prepared but that report was also not made part of the record.

(f) From the inquest report of Beant Singh, it is proved on the file that a Video film of the scene of crime was prepared on 31.8.1995 but there is no mention of this video film in the investigations and it has also not been made part of the record and has been suppressed for the reasons known to the

CBI.

(g) Despite the fact that it is admitted by the CBI that the Video Film was sent to Lt.Col Manik Sabharwal, a Ballistics Expert of the Army, and he also prepared a spot inspection report, mark CQ/1 dated 12.10.1995 and gave his opinion as to the cause and manner of blast but this witness was not examined during the trial and his report was not relied upon which further shows that the material facts have been suppressed.

(h) It is also admitted by PW-240, Inspector Nanha Ram, the first Investigating Officer of the Chandigarh Police and who was the first one to reach at the spot to assess the situation, that he had called two Police photographers and took the photographs of the scene of the crime including the photographs of two legs and a skull and the car DBA-9598 but none of these photographs have been made part of the record. Even, the photographs taken by the CBI independently were not made part of the record.

(i) The CBI had relied upon the photographs taken by the Lalji Mishra, an expert of FSL Punjab but there is no evidence on the file as to who had called Mr.Lalji

Mishra at the spot and how he took the photographs and what is the authenticity of those photographs

(j) None of the cars of the Carcade of the CM has been produced in the court during the trial to show the magnitude of the damage and the effect of the blast on the vehicle including the report of any expert in this regard.

(k) No part of the bomb or the alleged belt bomb has been found at the spot.

(l) It is admitted case of PW-31 and PW-240, Nanha Ram that there were so many weapons lying scattered at the spot but despite this, none of these weapon and the arms and ammunitions found at the spot was taken into possession or examined by a Expert and no such report has been brought on the file to show the presence of these weapons and its repercussions.

(m) No site plan of the recovery of any of the articles lifted from the spot or during the entire investigations has been prepared and brought on the record.

135. He further submitted that the factum of

faulty investigations is further proved on the file from the FIR, Ex.PW30/4, which has been registered at 8.30 p.m., on the statement of PW-30 as there is no explanation on the file as to why the FIR was not immediately registered despite the fact that there were so many eye witnesses of the occurrence including Baldev Singh, MLA, who was alive at that time and who was the most important eye witness being present near the Chief Minister, HC Baljit Singh driver of the other car of the CM, PW-6, Manojit Pal, a Security man. On the contrary, it shows that the FIR was registered later on to twist the facts as per their requirements only in the next morning.

136. Not even this, on the evening of 31.8.1995 itself the investigations were handed over to the CBI but the formal registration of the case in the CBI division was registered on 1.9.1995 at 11.30 a.m and then investigations were started by the CBI team only the after noon of 1.9.1995. Not even this it is further clear from the records that after taking over the investigations by the CBI on 1.9.1995 nothing was done by the CBI till 3.9.1995 and all the proceedings done by the CBI on 1.9.1995 have been suppressed and concealed.

137. The learned defence counsel further submitted that the entire case of the prosecution leading to the theory of human bomb blast is based

on the recovery of two legs and a skull of a unknown person from the spot, which was later on identified to be of assassin Dilawar Singh but there is no evidence on the file to prove the existence of two legs and the skull at the spot immediately after the blast and its recovery leading to the blast by a human bomb.

138. To substantiate his plea, he submitted that while the postmortem report of dead body of Baldev Singh deceased was conducted by PW-6, Dr.Diwan and he found that the injuries leading to death of Baldev Singh were caused by bomb a of incendiary type. At the same time, the prosecution allege that on 31.8.1995, when PW-240, Nanha Ram visited the spot, he took into possession the two legs and a skull of unknown person and kept the same in a refrigerator of Govt Hospital Sector 16, where as later on it was alleged that those were sent to P.G.I.

139. At the same time, it was alleged that on 2.9.95 on the asking of PW-240, Nanha Ram these two legs and skull were examined by PW-16, Dr.Sawhney to give an opinion but no documentary evidence has been brought on the file to show that any application has been moved in this regard with Dr.Sawhney. Even Dr.Sawhney has admitted that he has not prepared any report regarding the examination of two legs and the skull nor he gives

anything else in writing. On the contrary as per the DDR No.47 dated 1.9.1995, when Nanha Ram reported back to the Police Station and recorded this fact in Daily Diary, there was no mention of the recovery of any two legs and a skull nor his presence in the Hospital on 2.9.1995, as the DDR, Ex.D8 shows that Nanha Ram was on VIP duty during that time. Even in the postmortem report of deceased Beant Singh, it is nowhere mentioned that near the body of Beant Singh two legs and a skull were also found.

140. At the same time, it is admitted case of the prosecution that two legs and skull were examined by PW-6 for the purpose of postmortem examination only on 4.9.1995 but there is no evidence on the file to show the existence and recovery of these two legs and a skull after the incident till its examination and there is nothing on the file as to where these legs and skull were kept. In the inquest report, Ex.PW6/42 it is mentioned that these two legs and skull were being sent to PGI but PW-240 alleged that it was taken to G.H Sector 16 Chandigarh. There is a cutting in the application moved by SI Gamdoor Singh for the PMR of two legs and a skull, Ex.PW6/40 and SI Gamdoor Singh, PW-176, admitted that he was not present when it was prepared on 5.9.1995.

141. Thus there is no evidence on the file to

show the recovery of these two legs and skull from the spot on 31.8.1995. Even Dr.Sawhney in his cross examination admitted that he has not prepared any written report of his examination on 2.9.1995 and the description given by him of the legs is that these were below groin crease whereas the case of the prosecution that these legs were below knee.

142 All these facts & circumstances shows that these legs and skull were not recovered from the spot but it was introduced later on to link and prove the human bomb theory. No mortuary register of GH Sector 16 has been brought on the record to prove the depositing of these legs and skull in the mortuary. On the contrary, when the defence insisted, PW-20 alleged that there is no mortuary register being maintained at G.H Sector 16 Chandigarh, whereas actually register is being maintained in Mortuary and that register has been suppressed only with a view to conceal the true facts. Thus once the recovery of two legs and skull were doubtful, the entire story of the prosecution that it was a case of human blast caused by deceased Dilawar Singh is without any basis. On the contrary, it proves that the true genesis of the blast has been suppressed by the CBI in collusion with Punjab Police.

143 Not even this, it is alleged by the prosecution that PW-165, Roop Singh examined the

scene of crime as well as two legs and skull but in his report, Ex.PW165/1 to 7, he has not mentioned this fact and he has not prepared any separate report as to the examination of two legs and skull at the spot. Even PW-240, Nanha Ram alleged that he had seen two legs and the skull near the car of the CM but no separate recovery memo for taking the same into possession has been made, which further falsify the factum of existence and recovery of these body parts at the spot.

144 To further substantiate this aspect, he submitted that there is no evidence on the file to show at what place these two legs and skull were kept from 31.8.1995 to 4.9.1995, when these were handed over to PW-6, Dr.Inderjit Diwan for postmortem examination.

145 Not even this, the identity of two legs and skull by Harnek Singh, father of deceased Dilawar Singh and Chamkaur Singh brother of deceased Dilawar Singh, is also doubtful as it is alleged by PW-246 that this identification was done by these persons on 5.9.1995 at about 4.30 PM in the mortuary of P.G.I in the presence of PW-6, Dr.Inderjit Diwan vide identification memo, Ex.D99/1, whereas this fact has been denied by PW-6, Dr.Inderjit Diwan, who stated that two legs and skull were kept by him in the dissection room of his department from 4.9.1995 to 6.11.1995, when

those were handed over to the Harnek Singh, as per the request of the C.B.I. If it is so this fact clearly proves that the alleged two legs and skull were never recovered from the spot nor those were ever identified by the father and brother of deceased Dilawar Singh and a false story has been made by the prosecution to introduce human bomb theory just to wriggle out from their own inefficiency in the security of the deceased C.M.

146 He further submitted that even the report of PW-245, Dr.Lalji Singh, Director Centre for Cellular Molecular Biology Hyderabad, Ex.PW245/7 is of no consequences as there is nothing on the file to show that he had ever taken any sample of tissues from the alleged two legs and the skull and compared the same with the blood of Harnek Singh and Surjit Kaur parents of deceased Dilawar Singh, as taking of blood samples of those two persons is highly doubtful because it is alleged by PW-246, A.K.Chanda that the blood samples of Chamkaur Singh, Harnek Singh and Surjit Kaur were taken by Dr.Dalbir Singh at about 4.30PM as mentioned in the memo, Ex.PW99/1 in the presence of Dr.Lalji singh but Lalji Singh admitted that he reached at P.G.I only at about 6.30 PM and then took the samples through the Doctors of the P.G.I. Whereas the testimony of PW-246, Dr.A.K.Chanda falsify this fact. Even the parents of deceased Dilawar Singh namely Harnek Singh and Surjit Kaur have not been

examined by the prosecution on this aspect to prove the factum of taking of the samples and its test by the PW-245.

147 Not even this PW-245 further admitted that out of the 17 parcels taken only three samples referred mark D, E and F in the report, Ex.PW245/2, whereas all the remaining samples mark G to mark T, as mentioned in the report, Ex.PW245/2, are found to be unfit for comparison being highly degraded and this fact further shows that the samples of disputed body parts were not properly kept and were decomposed and when mark G to mark T were decomposed being taken from the same parts, how sample D, E and F can match, specially when all the samples were taken from the same parts, which were stored in a single container of formalin and ethanol and due to this DNA had decomposed. At the same time by now it has not been established that the DNA test is a perfect test specially when it has not been carried by all the five recognized methods of DNA testing.

148 At the same time, the best established form of forensic DNA identification analysis is **restriction fragment, length, polymorphisms** analysis known as **RFLP** but it has not been conducted in the present case and report of PW-245 is based on **Polymerase chain reaction test**, known as PCR method, is not a full proof test as it is a

technique used for DNA amplification as admitted by PW-245 and if it so report of PW-245 is not admissible as a direct evidence on this dispute.

149 At the same time, even the dispatch of samples to the Hyderabad Laboratory is doubtful. The prosecution has not brought on the file any dispatch letter but it was called from PW-245 during his cross examination and exhibited as PW-245/14, which shows that there is no dispatch number to show, when the samples were forwarded to CCMB Hyderabad and in what condition. At the same time the identification cards Ex.PW-245/3 to Ex.PW-245/6 are incomplete and it is nowhere mentioned in these identification cards as to for what purpose the samples are being taken, in whose presence, by whom and all the columns of three forms are blank and lastly in the report, Ex.PW245/2, it is mentioned that the samples were received in the laboratory on 7.9.1995 whereas it is alleged by the prosecution that those were taken to the Laboratory by PW-245 himself on 8.9.1995. All these facts shows that this report is also based on the whims of the CBI and not admissible in evidence.

150 Not even this, PW-6, Dr.Diwan alleged that he has also handed over five bottles containing the tissues from the two legs and the skull to Doctor Lalji Singh but Lalji Singh had nowhere stated so.

He further stated that no permission of any Magistrate and consent of these persons were obtained before taking their blood samples and as such the DNA report based on those samples is not admissible in evidence and can be made basis to conclude that the two legs and the skull were of deceased Dilawar Singh. In support of this plea, learned defence ocounsel relied upon **Gautam Kundu Verus State of West Bengal, 1993 (2)Recent Criminal Report, Criminal , page 497, Hira Singh Vs. State of U.T 2005 (4) RCR Criminal page 559 and Sakthi Vel Vs. Karpagam 2005(4) RCR Criminal, page 422**

151 Learned defence counsel further submitted that in view of the above facts & circumstances, it is proved on the file that it was not a case of human bomb blast but it was a case of multi bomb blast which took place at different places and one of these bomb blast may be from inside the car but the prosecution has intentionally suppressed the true genesis of the occurrence and put forward a tailor made story of the human bomb just to wriggle out from the liability of the security agencies, who were liable for this blast

152 To substantiate this plea, he submitted that it is alleged by the prosecution that an anti-sabotage test was being done as and when the Carcade of the CM left his house and on 31.8.1995 also this check was done by PW-40, Salamat Masih

but this fact has been put forward by the prosecution just to improve its case to save the security agencies as it is admitted case of PW-40 that a register of Sabotage check is being maintained but no such register showing anti sabotage check on 31.8.1995, has been brought on record despite the fact that PW-40 alleged that it was taken by the CBI authorities whereas it is undisputed case of the prosecution that no such test was done when the CM was to leave the Secretariat.

153 At the same time, the most material witnesses to give the true account of the genesis of occurrence was PW-78, D.K.Tripathy, who was the Security Incharge on duty, being an officer of the SP rank and he was the most important witness, who could gave the true account of the sequence of events but his statement was not recorded immediately after the blast despite the fact that after being injured in blast he gained consciousness on the same night. Whereas his statement was recorded for the first time on 11.9.1995, which itself shows that his statement is delayed unnecessarily to suit the theory to be propounded by the prosecution.

154 Not even this, PW-53, HC Baljit Singh driver of the second car of the Carcade of the CM, which was immediately after the car No. PB-08-3469,

PW-66, Iqbal Singh driver of the third car of the Carcade of the CM and PW-56, Manojit Pal Singh, a Security official of the CRPF of the Escort Gypsy were the four other material eye witnesses of the occurrence and their statements were also not recorded immediately after the blast, despite the fact that they were also fit to make the statement. This fact alone shows that a false story giving a twisted account of the occurrence has been concocted.

155 He further submitted that in **Ganesh Bhawan Patel Versus State of Maharashtra, AIR 1979 Supreme Court, page 135**, the Hon'ble Apex Court held that delay of few hours simpliciter, in recording the statements of eye witnesses may not by itself amount to a serious infirmity in the prosecution case but it may assume such a character if there are concomitant circumstances to suggest that the investigator was deliberately marking time with a investigator a intention to decide about the shape to be given to the case and the eye witnesses to be introduced. Accordingly in the present case non recording of statement of above mentioned material witnesses, immediately after the blast shows that the investigations of this case are highly defective and tainted leading no where to prove the human bomb theory.

156 To further substantiate this plea, he

submitted that from the postmortem reports of all the injured vis a vis the seat of their injuries and place dead bodies at the spot after the blast and their positions, when the blast took place, shows that the injuries suffered by all the dead persons were not on account of a human bomb blast but it was on account of multiple bomb blast taken place at different places. Some of the dead persons died because of the burn injuries, which are not possible in a blast involving explosives but is possible only in case of incendiary bomb blast as admitted by PW-6, Dr. Inderjit Diwan, a Forensic Expert. the Metallic pieces projectiles, glass pieces and other foreign articles recovered from the dead bodies of dead persons coupled with the seat of injuries and nature of injuries clearly shows that these injuries and death because of those injuries is not possible in a blast involving explosives. Thus, this fact also shows that the true genesis of the occurrence and the blast has been suppressed and it was only for this purpose that the photographs taken by the police photographers of the Chandigarh Police, as admitted by PW-240 and photographs taken by the CBI Photographer have not been made part of the record and even the video film prepared at the spot to show the scene of crime and its genesis has been suppressed.

157 He further submitted that the most

material incriminating evidence to show the nature of blast, was the three cars of the Carcade of the CM along with the other damaged vehicles but no report as to their mechanical examination or their inspection to assess the loss and the nature of blast has been brought on the file which further shows that the very story put forward by the prosecution that this blast was because of human bomb blast has not been proved.

158 To support this he submitted that in **Bhagirath Versus State of HP, 1976 CRR page 116**, it was settled by the Hon'ble Apex Court that it was the duty of the prosecution to prove that very story which was forwarded in the charge sheet and no new story can be created by the court. As such, he submitted that this fact further shows that the entire story of the prosecution is based on concocted facts.

159 To further substantiate their defence, learned counsel for the accused submitted that the second most material evidence relied upon by the prosecution is the recovery of car No. DBA-9598, which is exhibited as Ex.P76, from the spot and its link with the accused persons. However, the prosecution has miserably failed to prove the recovery of the car DBA 9598 from the spot and its link with the accused persons.

160 To fortify his plea, he submitted that it is alleged by the prosecution that PW-240, when visited the spot after the blast, an Ambassador Car, DBA-9598, Ex.P76, of white colour was found parked abandoned in the parking area toward the Haryana Secretariat and on inspection, he found that the said car has been recently painted and he suspected that the said car might have been used or connected with the commission of the crime of Bomb blast and then he put a guard to guard the car.

161 Thereafter on the same evening when he searched the car he found various papers including the registration certificate mark WW, Insurance Cover, a slip containing some writing in Punjabi, a small battery and took all the articles into possession as per the memo, Ex.PW177/7 and the car along with bunch of keys were also taken into possession as per separate seizure memo, Ex.PW177/6 and then brought the car to the Police Station and thereafter on 1.9.1995, when the CBI took over the investigation, the said car was examined by PW-178, S.K.Chadha in the presence of Surinder Pal and memo, Ex.PW178/1 was prepared vide which some chance prints of finger prints etc were lifted along with the photographs and the rear view mirror of the car was also taken into possession for the examination in the Laboratory.

162 However, a totally contradictory story

has been put forward by PW-178 in this regard. As per this witness he was directed by the CBI on 31.8.1995 to visit the scene of occurrence and inspect the car and he accordingly reached Chandigarh on 1.9.1995 and inspected the car between 11 a.m to 12 noon.

163 At the same time, it is admitted case of PW-240, Nanha Ram, that when he examined the car, he took the photographs of the car with the help of Police photographers but those photographs were not made part of the record. No independent witness was joined during the inspection of the car either by PW-240, Nanha Ram or by PW-245, S.K.Chadha and even that car was not kept in proper custody till the trial. It is alleged that PW-178 inspected the car in the presence of PW-190, ASI Ranjit Singh. However, as per the DDRs, copies of which are Ex.D8/A and D8/B, ASI Ranjit Singh was not present in the police Station during the time of inspection of car but he has been shown to be on patrolling.

164 No entry in the malkhana register regarding the custody of the car has been brought on the record. No DDR has been recorded to show the inspection of the Car by the CBI in Police Station as required under the rules. As such the recovery of the car from the spot is highly doubtful.

165 Not even this, the plea of the prosecution

that some of the finger prints lifted from the car were found to be that of accused Lakhwinder Singh and Balwant Singh as per PW-178, S.K.Chadha is also not proved on the file. First of all it is admitted case of the prosecution that both the accused Lakhwinder Singh and Balwant Singh were constable in the Punjab Police and as such the prosecution was having admitted specimen signatures and hand writings of both these accused persons as well as their finger prints and the same can be got compared with the chance prints lifted from the alleged car but no such recourse was taken by the prosecution. On the contrary, it is alleged that the specific finger prints of Lakhwinder Singh and Balwanit Singh were taken by PW-178 and then those were compared with the disputed prints lifted from the spot but again the taking of specimen finger prints is not proved on the file as per the requirements of the law.

166 To substantiate this plea, he submitted that it is admitted case of the prosecution that all the finger prints of both these accused person is were taken without their consent and even without the permission of any Magistrate as required under the law and as such these finger prints can not be made basis to link these accused persons with the car. In support of this plea, he has relied upon **AIR 1997 Supreme Court page 2960.**

167 At the same time, there is no evidence on the file that these finger prints were of accused Lakhwinder Singh and Balwant Singh as there is no evidence on the file to show that these were taken either by PW-178, S.K.Chadha himself or in his presence.

168 Not even this, the report of PW-178, S.K.Chadha as to the comparison of the chance finger prints with the admitted finger prints of both the accused persons and matching the same is highly doubtful because it is admitted case of PW-178 that the admitted finger prints of accused Balwant Singh is of whorl type. Whereas the disputed chance print were not of this type as these were fragmentary. Similarly the pattern of finger prints of accused Lakhwinder Singh was found to be of double loop composite type whereas the chance prints were found to be of different pattern and if the pattern of both the thumb impressions were not the same, there was no question of saying that these matches with the chance print taken from the car.

169 In support of this plea, they relied upon **smt.Kamla Kanwar Versus Rattan Lal, AIR 1971 Allahabad page 304**, wherein it was held by the Hon'ble High Court that to compare the thumb impression first of all the pattern should be examined and if the pattern are different it is

conclusive proof that the impressions are of different persons and only if the pattern matches with the disputed the core and delta should be located. Accordingly in the present case once the pattern of both the disputed and the admitted finger prints were found to be of different patterns, there is no question of saying that these are similar to each other. Thus, even the report of PW-178, S.K.Chadha, Finger Print Expert, Ex.PW178/5, proves in vain to match the finger prints with that of accused Balwant Singh and Lakhwinder Singh.

170 Accordingly he submitted that the entire story of the prosecution that the accused Lakhwinder Singh, was also present at the Secretariat along with accused Balwant Singh and Dilawar Singh for the purpose of bomb blast is highly doubtful and can not be made basis to link these accused persons with this offence.

171 Learned defence counsel further submitted that one of the other material circumstances put forward by the prosecution to link the accused Jagtar Singh Hawara and Jagtar Singh Tara, (since proclaimed offender), with the case in hand is that both of them purchased Car bearing registration No. DBA-9598 from PW-32, S.K.Dutta and at that time accused Jagtar Singh Tara represented himself as Basant Singh and that car was brought to Chandigarh

and after repainting the same in white colour, the same was used by accused Jagtar Singh Tara, Balwant Singh and Dilawar Singh to reach Punjab and Haryana Civil Secretariat to hit the target. However, the prosecution has miserably failed to prove both these facts with cogent and reliable evidence. On the contrary, there are so many circumstances which shows that even if it is presumed that the car in question has been used in the commission of crime, there is no evidence to say that it was purchased by accused Jagtar Singh Hawara and Jagtar Singh Tara.

172 Before submitting further, learned defence counsel submitted that accused Jagtar Singh Tara is now a proclaimed offender as such, the alleged confession of Jagtar Singh Tara can not be taken into consideration either against him or against any of the remaining accused persons, as per law laid by the Hon'ble Supreme Court in **Eshar Singh Vs. State of Andhara Pradesh, AIR 2004, S.C. Page 3030.**

173 To substantiate this plea, he submitted that it is admitted case of the prosecution that wife of PW-32, S.K.Dutta was the registered owner of the Car DBA-9598 and the CBI got the information on 31.8.1995 itself that this car has been used in the commission of the crime and accordingly Delhi Police was asked to trace the whereabouts of the

registered owner and took further steps. It is further admitted that 1.9.1995 itself the Police came to know that PW-32 is the owner of the Car and he was associated in the investigations of the case by Shri G.N.Gupta, DSP but there is no explanation on the file that why the said G.N.Gupta has not been examined as a witness of the prosecution.

174 In addition to this, it is also admitted case of the prosecution that from 1.9.1995 to 3.9.1995, PW-32 was interrogated by the Delhi Police but he was never asked to give the details of the persons to whom he sold the car and to produce the documents in support of that. It was only on 16.9.1995, when PW-32 was called upon to hand over the documents and this date was intentionally introduced because prior to that the accused Jagtar Singh Tara was already arrested on 13.9.1995 and the documents of the car, Ex.PW32/1 to Ex.PW32/7 were not existing between 1.9.1995 to 20.9.1995 and those were fabricated after the arrest of accused Jagtar Singh Tara and then shown to have been produced by PW-32 on 20.9.1995. There is no explanation on the file as to why PW-32 has not produced all the documents relating to the alleged sale of the car to Jagtar Singh Tara on 1.9.1995 itself. Even G.N.Gupta who has recorded the statement of S.K.Dutta has not been examined to explain this fact.

175 At the same time, it is also proved on the file that PW-32, S.K.Dutta was residing in a Flat of Sahirdya Apartments and a visitor register was being maintained at the entry gate of the colony but that register has not been taken into possession to show that somebody has visited S.K.Dutta on the alleged day and time. Even when this record was summoned in the defence, it was not produced by the concerned colony alleging that it was never maintained at the relevant time. On the contrary DW-20, P.K.Ghosh, the present member of the society, admitted that at present a visitor register is being maintained. Thus this fact further shows that the said register has been suppressed intentionally as none of the accused ever visited the house of PW-32, S.K.Dutta.

176 At the same time, both these accused persons have been linked with the case on the basis of identity of the photographs by PW-32, S.K.Dutta, which is of no consequences because the identity by photographs is not admissible as evidence as laid down by the Hon'ble Apex Court in **Laxmi Pat Choaria Vs. State of Maharashtra, AIR 1968, Supreme Court, page 938** where the Hon'ble Apex Court held that the ability of the witness to identify a suspect should be tested without showing his photographs or furnishing him any other fact for identification and if the photographs of the suspect is already shown before the identification,

such an identification is worthless.

177 As such, he submitted that the identity of the photographs by PW-32 is also not relevant and can be made basis to link these accused persons. At the same time, no test identification parade was conducted to establish the identity of the accused Jagtar Singh Tara from PW-32, S.K.Dutta as required under the law. PW-244, R.S.Dhankar, who has arrested the accused Jagtar Singh Tara, admitted that he was not even aware about the identity of S.K.Dutta, when he arrested the accused, Jagtar Singh Tara on 13.9.1995 and only on 13.9.1995 he came to know about this fact and if it was so it was his duty to associate S.K.Dutta for the identity of the accused Jagtar Singh Tara. At the same time, the alleged pointing out of the house of PW-32, S.K.Dutta by accused Jagtar Singh Tara as per his alleged disclosure statement is not admissible being against the provision of Section 27 of the Evidence Act.

178 At the same time, it is alleged that two independent witnesses were associated during the pointing out of the house of PW-32, however, signatures of none of these witnesses were taken on the pointing out memo which further shows that the said pointing memo is of no consequence and can not be made basis to link the accused Jagtar Singh Tara with the purchase of car. As far as the

identity of accused Jagtar Singh Tara and Jagtar Singh Hawara in the court is concerned that is also of no consequence as PW-32 has identified these accused persons in the court for the first time and as such this fact is also not admissible in evidence.

179 Last but not least, he submitted that no document whatsoever has been recovered from the possession of the accused Jagtar Singh Tara to show that he had purchased the Car, DBA-9598 from PW-32 and as stated earlier no independent witness was joined during the alleged pointing out of the house of PW-32 by accused Jagtar Singh Tara, from the neighbourhood of that colony and even R.S.Dhankar failed to explain whether there was any watchman in the colony and whether he had joined any other witness of the colony. Not even this, he had also not recorded the statement of any of the two witnesses allegedly joined during the pointing out of the house of PW-32, which clearly shows that none of these witnesses were actually present at the time of alleged identification and false story has been put forward.

180 At the same time, PW-244 has failed to explain how he came to know about the name and identity of accused Jagtar Singh Tara. At one point of time he alleged that he arrested Jagtar Singh Tara on the information given by Chief

Investigating Officer S.K.Saxena, however, Sh.S.K.Saxena has denied this fact and if it is so there is no link evidence on the file to show how the name of Jagtar Singh Tara comes on the record and how he has arrested. Thus, this fact further shows all the proceedings of the C.B.I regarding the arrest of Jagtar Singh Tara and his link with the car are fabricated and manipulated just to falsely implicate him in this case and this circumstance can not be taken into consideration for any purpose whatsoever.

181 He further submitted that the identification of accused Jagtar Singh Hawara by PW-32 by way of his photo graph, Ex.PW32/9, is also of no consequences as stated earlier. Thus, the presence and identity of accused Jagtar Singh Hawara along with Jagtar Singh Tara is also highly doubtful.

182 Learned defence counsel further submitted that since the entire case of the prosecution was based on circumstantial evidence, as such, the prosecution was required to prove the proper custody of the incriminating evidence collected from the scene of crime and the case property till it reaches the experts, to rely upon the reports of the experts. To substantiate this plea, he submitted that during the course of cross examination of 240 to 248, who have investigated

the case at one stage or other, it is undisputed case of the prosecution that samples of incriminating articles recovered from the spot change hands from one person to other person and from one place to other place and the entire case property right from the stage of recovery till it reaches at the hands of experts remains in the possession of different persons at different places and if it was so it was the duty of the prosecution to prove the proper custody and intactness of the case property to complete the link evidence to link the accused persons with the commission of the crime and factum of conspiracy.

183 However, the prosecution has miserably failed to bring any link evidence on the file to prove the proper custody and intactness of the said articles during the investigation till the time it was deposited with the police officials and then till the time it was deposited with the experts.

184 He further submitted that as held by Hon'ble Apex Court in **State of Rajasthan Vs. Daulat Ram, AIR 1980 Supreme Court, page 1314** and as reiterated by Punjab & Haryana High Court in **Om Parkash Vs. State of Haryana, 1999 (1) RCR Criminal page 771; and Balwant Singh Vs. State of Punjab, 1997 (4) RCR Criminal page 824**, that where the prosecution has failed to examine all those various persons with whom the case property remain during

the investigation and trial the identity of such case property becomes doubtful and it can not be considered to convict the accused.

185 Accordingly in the present case, it is admitted case of prosecution that as and when any incriminating articles were recovered either from the scene of crime or from the accused persons those were deposited in the malkhana of Chandigarh Police or in the CBI malkhana and thereafter those articles were sent to various experts and if it was so, it was the duty of the prosecution to examine all those witnesses, who were concerned with the custody of the case property from the stage of its recovery till it reaches the experts.

186 He further submitted that in this case, it is admitted case of PW-240, Nanha Ram, the first Investigating Officer of Chandigarh Police, and PW-248, S.N.Saxena that the entire incriminating articles recovered from the spot were deposited in the malkhana but both of them had failed to explain the place of that malkhana and the name of that person. No witness have been examined and no affidavit of any such witness has been brought on the record to show the depositing of case property and its intactness till it remained in their possession. The incriminating articles taken into possession vide seizure memo, Ex.PW228/1 on 2.9.1995 were deposited with the CFSL on 21.9.1995

but there is no evidence on the file to show where these articles remained from 3.9.1995 to 21.9.1995 and who took these articles to the expert and in what manner.

187 Similarly, no evidence has been brought on the file to prove the identity of the seals used for sealing those articles. During the trial case property was produced by the MHC, Police Station North Chandigarh, which is now Sector 3, Chandigarh but it is undisputed case of the prosecution that the case was investigated by the CBI and if it was so the property should have been kept in the malkhana of CBI Police Station.

188 Similarly, there is no evidence on the file to show that during the time the case property were examined by various experts where it remains and with whom. If it is the factual position, none of the incriminating articles relied upon by the prosecution in support of its story and can be taken into consideration to link any of the accused persons with this case and the case of the prosecution is liable to be disbelieved on this aspect alone and it further shows that no real investigations were conducted and the entire case is framed by the prosecution after the arrest of the accused persons for which the benefit of doubt must be given to the accused persons.

189. As far as the expert evidence is concerned, the learned defence counsel submitted that as stated earlier the report of none of the experts examined by the prosecution is admissible in evidence. To substantiate this plea, he submitted that one of the reports relied upon by the prosecution is, Ex.PW248/2, report of Dr.Balinder Kaur, who has allegedly inspected the scene of crime and took into possession certain incriminating articles and then examined the same. However, there is no evidence on the file to prove that this expert ever visited the scene of crime or lifted anything from the spot. No doubt, it is alleged by the prosecution that immediately after the occurrence Experts of FSL Punjab, CFSL Delhi and CFSL Chandigarh were called at the spot to assess the scene of crime and one of those experts was Doctor Balinder Kaur, who allegedly reached at the spot at 10.30 a.m on 01.9.1995, when she examined the spot and took into possession the articles in the presence of SI Ved Parkash. However, no recovery memo showing the recovery of incriminating articles by this witness has been prepared to show what was picked by her from the spot, how it was picked and how it was packed and where it was kept.

190. It is admitted case of the prosecution that PWs 175 to 179 were the Police officials of Chandigarh Police, who were present at the spot

from 31.8.1995 to 3.9.1995 but none of those witnesses have stated that Balinder Kaur inspected the spot. As per PW-179, SI Ved Parkash, he deposited 27 incriminating articles lifted from the spot with CFSL, Chandigarh at about 11.00 a.m, whereas PW-248, Chief Investigating Officer stated that the recovery proceedings were started in the after noon only if it was so how PW-179 was present at the spot and how some incriminating articles were lifted at the spot is a fact which remain unexplained on the file and it shows that report of Balinder Kaur is not admissible in evidence. Even she had failed to step into the witness box to prove this report and to face cross examination as to the recovery of the incriminating articles and the inspection of the scene of the crime. Thus, this evidence is a waste paper and liable to be ignored.

191. He further submitted that one of the circumstantial evidence relied upon by the prosecution is the recovery of belt, Ex.P97 and its link with the accused Balwant Singh and deceased Dilawar Singh. However, the recovery of belt is highly doubtful. To substantiate this plea, he submitted that it is alleged by the prosecution that on 10.9.1995, DSP Devi Singh has recovered the Scooter from Pritam Cycle Stand, Bus Stand, Patiala in the presence of PW-90, D.P.Singh and PW-91, Ram Singh and on search of the dickey, belt, Ex.P97, was

recovered and this belt was same belt which was got stitched by accused Balwant Singh and Dilawar Singh from PW-75, Jasbir Singh.

192. However, the prosecution has miserably failed to prove this fact on the file. First of all, DSP Devi Singh, who has recovered this belt has not been examined for the reason known to the Police. At the same time, it is alleged that this belt was sent to CFSL on 10.10.1995 despite the fact that it was recovered on 10.9.1995. Where it remained for the period 10.09.1995 to 10.10.1995 and with whom is a fact, which remained unexplained on the file. No witness of any malkhana has been examined to prove the custody of this belt and its intactness. As such, this evidence is also inadmissible and can not be considered for any purpose whatsoever.

193. He further submitted that similarly recovery of the battery Ex.P153 from the Car No. DBA-9598 has also no relevancy with this case as it was neither sealed nor it has any concern with the factual aspect of the case. On the contrary, the entire case of the prosecution is that on 1.9.1995 a remote control device has been used for the blast and it has been recovered from the spot and this fact was duly published in the news paper "The Tribune" dated 1.9.1995, copy of which is, Ex.PW240/D-A, as well as in "Hindustan Times" but

that remote control device has not been made part of the record and as such report of the expert, PW 165, exhibited as PW 165/4, as to the battery, is also an inadmissible piece of evidence.

194. Similarly, he further submitted that the report of PW-160, R.S.Verma, Ex.PW160/1 as to the traces of the RDX on the articles recovered from the house of accused Gurmit Singh is also not admissible in evidence as the recovery of these articles is highly doubtful. To substantiate this plea, he submitted that it is alleged by the prosecution that on 8.9.1995 when the search of the room of accused Gurmit Singh was conducted, some incriminating articles including card board, news paper etc were recovered in the presence of PW-160, R.S.Verma and some other witnesses. But the recovery memo of the alleged proceeding, Ex.PW68/B is not signed by Dr.R.S.Verma, which shows that he was not at all present during these recovery proceedings.

195. Similarly report of PW-165, Roop Singh, Ex.PW165/5, showing the presence of traces of RDX on the news paper pieces, which, is Article-Ex.P88, is also inadmissible because it is admitted case of PW 165, Roop Singh that this article was received by him on 8.11.1995 and there is no evidence on the file to show that where it remains from 8.9.1995 to 8.11.1995 and with whom. Not even this, the

report, Ex.PW165/1, regarding examination of 27 parcels is also not admissible in evidence as these articles were received in CFSL Delhi on 21.9.1995 despite the fact that these were recovered from the spot on 3.9.1995 and there is no evidence as to where these articles remain during this period that to as intact.

196. Learned defence counsel further submitted that the main plank of the arguments of learned Public Prosecutors is that the conspiracy of this case was hatched by Wadhawa Singh and Mehal Singh in Pakistan and to prove this fact the prosecution has relied upon documents Ex.P134 to Ex.P150. However, there is not even iota of evidence on the file to prove this fact. None of 248 witnesses of prosecution could even say single word showing the involvement of Pakistan in this crime in any manner either directly or indirectly. Even none of the Investigating Officers of the prosecution has given even passing remarks on this aspect.

197. On the contrary, from the evidence led by the prosecution, if at all any conspiracy is put forward it is alleged that it has been hatched in Norway, England, Germany and Canada. There is no evidence on the file that accused Wadhawa Singh and Mehal Singh are based in Pakistan. On the contrary the entire evidence of the prosecution suggests that this conspiracy was either made by accused

Balwant Singh personally to kill Beant Singh, for which he took the help of accused Harjit Singh. Even in the confession of Jagtar Singh Tara, it is alleged that accused Paramjit had told him that accused Jagtar Singh Hawara came from Pakistan and told to kill Beant Singh without mentioning anything about the involvement of Pakistan or its role.

198. At the same time, all the prosecution witnesses examined to link the accused persons with this conspiracy including PW-63, Avtar Singh, landlord of accused Gurmeet Singh, PW-121, STD booth owner of Ghaziabad, PW-122, Bhupinder Singh PCO owner, PW-123, Harvinder Singh, PW-124, PW-125, PW-127, PW-130, PW-132, PW-133, PW-134, PW-135, PW-136 and PW-140 have alleged that all the calls made by the accused persons were either to Germany or Norway or UK and no call was ever made to Pakistan, which further shows that the entire story of the prosecution as to hatching of conspiracy in Pakistan is baseless.

199. The testimony of PW-100, Dilbagh Singh, who brought the copies of documents, Ex.P134 to Ex.P150, is of no consequences as no source of these documents have been brought on the file and as such these documents have not been proved on the file as per the requirement of law. No author of these documents has come forward to prove its

contents. On the contrary these documents are the copies of some documents and it is admitted case of PW-100, Dilbagh Singh that he had not kept any record as to the source of these documents and he also admitted that he has no information from where these documents were received and from what channel.

200. If it is so, the entire testimony of PW-100 is based on hearsay and as such is not admissible in evidence as settled by the Hon'ble Apex Court in **Sakattar Singh Vs. State of Haryana, 2004 (11) Supreme Court Cases, page 291**, where the Hon'ble Apex court held that where the statement of witness is based not on his personal knowledge but he heard from others it is not admissible. Similarly in **Smt.Kunti Devi Vs. Radhey Sham, AIR, 1978 Allahabad, page 185**, the Hon'ble Allahabad High Court held that the mere fact are that the documents are forthcoming from a Govt Department and bear its seal will not dispense with the necessity of formally proving those documents. Similar Principle was reiterated by the Calcutta High Court in **Kamal Kanto Dass Versus The State, AIR 1959 Calcutta, Page 342** and a full Bench of Rajasthan Hon'ble High Court in **Sabir Mohd Versus State of Rajasthan, 1996 (2)RCR page 23**.

201. Similarly he further submitted that it is alleged by the prosecution that Babbar Khalsa

International is a terrorist organization based in Pakistan and it hatched this conspiracy. However, no notification etc as issued under the provision of Unlawful Activity Preventions Act, 1967 has been brought on the file to show that it has been declared as a unlawful organization and banned. At the same time, there is no evidence on the file to show that accused Jagtar Singh Hawara was the member of this organization.

202. Similarly the statements of PW-35 and PW-38, who brought the copies of the fax message mark AAA, DDD and EEE is also not admissible in evidence, to prove this fact as no source of these fax messages have been proved on the file nor these were verified by the CBI to confirm its source and authenticity. The testimony of PW-207 and PW-209 to identify the signatures of Wadhawa Singh and Mehal Singh is also highly doubtful as the original documents are not shown to them and it is not possible for them to identify the hand writing and signatures after a gap of 25 years. At the same time, it is admitted case of PW-241, Surinder Pal Singh, DSP that the original record of society with the signatures of accused Wadhawa Singh were available but those were not taken into possession, as such there is no direct evidence on the file to prove the association of both these witnesses PW-207 and PW-209 with Wadhawa Singh and Mehal Singh and as such this plea of prosecution is also not

admissible and liable to be discarded.

203 Lastly learned defence counsel took up the case of each of the accused persons one by one facing trial before this court and submitted that there is no evidence on the file to prove that any of the accused persons facing trial in this case except accused Balwant Singh have been linked with the factum of conspiracy and are thus liable to be acquitted.

204. To substantiate this plea first of all learned counsel for the accused took up the case of accused Navjot Singh and submitted that only evidence against this accused is on the basis of disclosure statement of accused Jagtar Singh Tara, who alleged that some part of the RDX brought by Jagtar Singh Hawara was kept in the house of accused Navjot Singh. And when the accused Navjot Singh was arrested and his house was searched, although no recovery of any contraband article was made but some literature was recovered which shows that he was part and parcel of this conspiracy. However, prosecution has failed to bring any cogent evidence to prove that this accused was ever associated with any of the other accused persons for the commission of this offence and he was having any concern with this offence.

205 To bring home this fact, learned counsel

for the accused Navjot Singh submitted that PW-242, R.S.Dhankar, Investigating Officer, who has arrested the accused Navjot Singh, alleged that he arrested the accused as per the directions of the Chief Investigating Officer, on the basis of the evidence collected on the file and on the basis of disclosure statement made by accused Jagtar Singh Tara on 13.9.1995. However, PW-248, S.N.Saxena admitted that only PW-244, R.S.Dhankar knows about the evidence against Navjot Singh and he had not given any search warrant or authorization to R.S.Dhankar to arrest and search the house of the accused Navjot Singh, whereas PW-244 alleged that he did so as per the authorization of Chief Investigating Officer PW-248. In view of this, there is no explanation on the file as to how the accused Navjot Singh was linked with this case.

206 At the same time, it is admitted case of PW-248, S.N.Saxena that on the day, when the accused Navjot Singh was arrested he was at Chandigarh and if it is so why he himself has not arrested the accused and why he had not verified the evidence against the accused to ascertain his arrest are some of the facts which remain unexplained. In support of his plea, he has relied upon **Balak Ram and another versus State of U.P reported in 1974 Cri.L.J.1486**

207. At the same time, it is undisputed case of

PW-244 that while conducting raid, in the house of accused Navjot Singh, no independent witness either from the locality or from any where else was associated as required under the provision of Section 100, Sub-Section 4 of the Cr.P.C. Even the provision of Section 165 of the Cr.P.C regarding recording of satisfaction of search without taking warrant and forwarding the same to the Magistrate, within 24 hours, have not been complied in this case as admitted by PW-244 and PW-248.

208 No doubt PW-248, Chief Investigating Officer, is competent to authorize his subordinates for doing so but he is also required to record his reasons but in this case no such reasons have been brought on the record with a specific order giving authority to PW-244. Not even this, even the local police of Mohali was not associated during the raid and was not even informed as required under the provision of 166 Sub Section 2 of the Cr.P.C.

209 Above all PW-244 during the cross examination admitted that when he arrested the accused Navjot Singh, there was no link evidence against him except the information provided by accused Jagtar Singh Tara. If it is so, there was no question of conducting any raid as the confession of the co-accused can not be utilized as evidence for any purpose whatever as held by the

Hon'ble Bombay High Court in **Rashid Gafur Versus State of Maharashtra, 1985 (1) RCR, Criminal, Page 186**, where the Hon'ble Bombay High Court has held that statement of co-accused can not be utilized for the purpose of conclusion or inference to hold that a prima facie case is made out against some other accused and the provision of Section 30 of the Indian Evidence Act are not applicable in such a case.

210. Accordingly he submitted that in view of the above settled proposition of law, it is clear that there was not even a iota of evidence on the file with the prosecution to link the accused with this offence or with the conspiracy. He further submitted that the other material circumstance alleged against the accused Navjot Singh to link him with this case is that during the search some writings, Ex.PW91/23, Ex.PW91/25, Ex.PW91/27, Ex.PW91/29 and Ex.PW91/46 were recovered from the house of accused, in which the accused has allegedly mentioned some facts which shows that he was the part and parcel of the conspiracy. Apart from this, it is admitted case of the prosecution that no RDX or any incriminating article was recovered from the possession of the accused after the search of his house. As such, the question remains whether these documents are sufficient to link the accused with this offence as a conspirator.

211 However, first of all the prosecution has failed to prove that the incriminating writings are in the hands of accused Navjot Singh as the material witnesses of the prosecution on this aspect PW-91, PW-92 and PW-94, who have been examined by the prosecution to identify the hand writing of the accused, have failed to identify the hand writing of the accused on those disputed documents, although, they identified his hand writing on the admitted documents and other documents.

212 Even otherwise, even if it is presumed for a moment that these literature is in the hands of accused Navjot Singh, how it smacks, what to call of showing his involvement in the conspiracy, is a question which has not been explained on the file. Simply because of the fact that in the writing it is mentioned that blood will flow in the 'Satlu Yamuna Link Canal' instead of water and is of Beant, it can not be said that this evidence is sufficient to link him with the conspiracy and its consequences.

213 Learned defence counsel submitted that in **Indira Gandhi's murder case reported as AIR 1988 Supreme Court, page 1888**, the Hon'ble Apex Court has considered this aspect and held that conspiracy on the basis of incriminating documents can not be

inferred, unless it is shown that some active role in any manner was played by that accused.

214. Similarly, in **Balwant Singh and another Versus State of Punjab, AIR 1995, Supreme Court, page 1785**, the Hon'ble Apex Court laid down that raising of some lonesome slogans, a couple of times by two individuals, without anything more, did not constitute any threat to the Government of India as by, law established nor could the same give rise to feelings of enmity or hatred among different communities or religious of other groups.

215 Similarly, the Hon'ble Kerala High Court in **Arvindu Versus State of Kerala, 1985 Criminal Law Journal page 1259**, reiterated the same principle. Accordingly in the present case, the recovery of literature is not sufficient to link the accused Navjot Singh with the conspiracy.

216. He further submitted that as per PW-91, who was a co-employee of the accused Navjot Singh, the documents Ex.PW91/1 to Ex.PW91/22 are in the hand writings of accused Navjot Singh and also bears his signatures. However, when disputed documents i.e diary containing incriminating writings exhibited as PW91/23 to Ex.PW91/25, along with three loose sheets containing similar writings, exhibited as PW91/26 to PW91/30, were put to this witness, he stated that he is not sure

whether these writings are in the hands of accused Navjot Singh. To the same effect is the testimony of PW-92, Gurpreet Singh, another co-employee of accused Navjot Singh. He has also failed to identify the disputed hand writings to be in the hands of accused. As such, the prosecution has failed to link the accused Navjot Singh with the incriminating writings and to show that these writings are sufficient to link him with the conspiracy.

217. The prosecution has alleged that PW-109, Inderjit Singh, PW-184, Amarjit Kaur, PW-117, Gian Singh and PW-132, Jagjit Singh alleged that accused Navjot Singh was a member of Anand Kirtani Jatha and he along with accused Paramjit Singh and Jagroop Singh once disclosed that they are going to kill Beant Singh. However, all these four witnesses have not supported this version of the prosecution and even if it is presumed that these witnesses were knowing accused Navjot Singh, it itself is not sufficient to say that he was also involved in the conspiracy because apart from the disclosure statement of accused Jagtar Singh Tara, none of the other witnesses of the prosecution have ever named the accused Navjot Singh in any way.

218. Thus as such, as stated by DW-3, R.S.Bajwa a retired Army Man and neighborer of the accused Navjot Singh and his father DW-5, Tirlok Singh, the

accused Navjot Singh has been falsely implicated as he was taken away from his house and tortured to become a witness and when he refused to oblige the CBI, he was named as a conspirator without being there any evidence.

219. Not even this, the accused Navjot Singh was also arrested by Delhi Police in a case of sedition. But as per the judgment, copy of which is Ex.DW4/A, he was acquitted by the Delhi Court with the observation that he has been falsely implicated. Even DW-4, Mokham Singh, who was a co-accused with accused Navjot Singh in Delhi case, deposed that when the accused Navjot Singh was produced at Delhi he was tortured and when he asked accused Navjot Singh, he disclosed him that he is being forced to become witness and thus this fact further shows that this accused has been falsely implicated in this case. Above all in none of the confession made by all the remaining accused persons it is mentioned that this accused was also associated in this conspiracy. As such, the commutative effect of all these facts and circumstances is that prosecution has miserably failed to link this accused with this conspiracy and if it is so, he is entitled for benefit of doubt as no overt act is attributed to him except that he was part of conspiracy. Accordingly, he prayed that this accused is liable to be acquitted.

220. The learned defence counsel then took up the case of accused Nasib Singh and submitted that this accused has also been falsely implicated in this case only on the basis of disclosure statement of accused Jagtar Singh Tara and recovery of the RDX has been shown from him just to link him with this case without there being any evidence to show that he was ever associated in the conspiracy to kill Beant Singh at any stage.

221. To substantiate his case, he submitted that it is undisputed case of the prosecution that in all the disclosure statement of accused persons only the name of accused Balwant Singh, Dilawar Singh, Jagtar Singh Hawara and Jagtar Singh Tara were mentioned but the name of accused Nasib Singh and Navjot Singh was never mentioned. On the contrary, he has been linked only on the basis of the disclosure statements of accused Jagtar Singh Tara, which is not sufficient evidence, to prove his link with this offence or the conspiracy.

222. Not even this, as is clear from the disclosure statement of accused Jagtar Singh Tara, Ex.PW80/1, he only disclosed that he can identify the place and the house from where accused Jagtar Singh Hawara has brought RDX without naming the accused Nasib Singh as owner of the house or without disclosing his identity in any manner. If it is so, the disclosure statement of the accused

Jagtar Singh Tara was not sufficient to arrest the accused or to link him with this conspiracy. As such, there is no evidence on the file to show how the name of accused Nasib Singh surfaced in the case and how he was arrested.

223. At the same time, it is alleged by the prosecution that after the arrest of the accused Nasib Singh, he suffered a disclosure statement, Ex.PW81/1 admitting that some RDX has been concealed in his house by the accused Jagtar Singh Hawara and he can get it recovered and this disclosure statement was recorded in the presence of Raghubir Singh, then Sarpanch of Village Jhingran Kalan and Naib Singh Ex-Sarpanch and thereafter recovery of RDX was made in the presence of both these witnesses.

224. However, Naib Singh has not been examined whereas Raghubir Singh, who has appeared as PW 81, has categorically deposed that accused Nasib Singh never made any disclosure statement in his presence to the CBI nor he got recovered the RDX from his fodder room. On the contrary, he alleged that when he was called the RDX was already lying there and this fact clearly proves that a false recovery of RDX from the possession of accused has been shown to link him with this case.

225. Not even this, it is admitted case of PW-

243, A.P.Singh, who has arrested the accused Jagtar Singh Tara and recorded his disclosure statement, Ex.PW80/1 that two witnesses P.K.Sinha and Kirpal Singh of BSNL were present but both these witnesses were not taken to Village Jhingran Kalan to arrest the accused Nasib Singh and to recover the RDX and there is no explanation on the file. Apart from this the other private witnesses has not supported this theory of the prosecution.

226. At the same time, PW-243, A.P.Singh admitted that immediately after going to the house of accused Nasib Singh, on the identification of accused Jagtar Singh Tara, he arrested accused Nasib Singh and interrogated him and accused Nasib Singh disclosed that one bag of explosive has been kept concealed in his cattle shed on the asking of Jagtar Singh Hawara and all this was done without arresting the accused Nasib Singh and if it is so the disclosure statement made by the accused Nasib Singh without his arrest is not admissible in evidence. At the same time, from the cross examination of PW-243, it further comes out that he never visited the house of accused, Nasib Singh as he knows nothing about the situation of the house, its direction, the name of the neighbourers etc and as such it shows that accused Nasib Singh has been falsely implicated.

227. Not even this, one more fact which falsify

the story of the prosecution qua accused Nasib Singh is that PW-248 admitted that he directed PW-243, A.P.Singh to arrest the accused Nasib Singh and recover the RDX, as per the facts disclosed by Jagtar Singh Tara and he also handed over accused Jagtar Singh Tara to him. If it was so, there was no occasion to record disclosure statement of accused Jagtar Singh Tara or Nasib Singh as it was already in the notice of the Police that RDX is lying in the house of accused Nasib Singh whereas Jagtar Singh Tara in his disclosure statement has nowhere named the accused Nasib Singh as the owner of the house, from where accused Jagtar Singh Hawara has brought the RDX. This fact further shows that the alleged recovery of RDX on the basis of disclosure statement is not proved as per the requirements of the law and the testimony of PW 243 alone is not sufficient to convict the accused Nasib Singh for the offence of conspiracy specially when none of the prosecution witnesses including PW 243 or PW-248, Chief Investigating Officer have stated single word that the accused Nasib Singh was part and parcel of the conspiracy or that he kept RDX in his house knowing that it is being used for the murder of Beant Singh.

228. In support of his arguments, he has also relied upon **Bhagwan Dass Versus State of Haryana, 1970, C.L.R Punjab & Haryana High Court, page 156; and Jarnail Singh Versus State of Punjab in 2005**

(3) RCR (Criminal) page 314; Deva Versus State of Rajasthan AIR, 1999 Supreme Court 214; State of U.T Versus Rakesh Kumar and another 2002 (3) RCC, page 472; Vidyamati Vs. The State AIR (38) 1951 Himachal Pradesh, page 83; and Aher Raja Khima Versus State of Saurashtra AIR 1956 S.C. 217.

229. One more lacuna pointed out by learned defence counsel creating doubt regarding recovery of RDX from the house of accused Nasib Singh is that no site plan of the place of recovery has been made by PW-243 and there is no explanation on the file as to why it was not prepared. On the contrary, it shows that PW-243 never visited the house of accused Nasib Singh nor made any recovery. Not even this, it is alleged by the prosecution that Harpreet Kaur, daughter of accused Nasib Singh, was present at the time of recovery proceedings and she was also cited as a witness, as her statement u/s 161 Cr.P.C was recorded but she was not examined by the prosecution at least to prove the factum of arrest of the accused and search of his house.

230. Lastly, he submitted that the most material fact which falsifies the entire case of the prosecution qua accused Nasib Singh is that as per PW 243 after the recovery of the RDX the parcel of the RDX was sealed with the seal specimen of which is printed on the recovery memo, Ex.PW81/2

and also mentioned by PW-165 in his report Ex.PW165/2 but PW-165 who has examined the parcel of the RDX to assess its nature and potency admitted that the RDX parcel was sealed with the seal of CBI-SIC-II initials and this fact alone shows that the parcel which was examined by PW-165 was not containing the alleged RDX which was recovered from the possession of the accused Nasib Singh as the same was sealed with different seals.

231. At the same time, it is admitted case of PW-248 that PW-243 after the recovery of the RDX handed over the parcel to him and he deposited the parcel of RDX in the malkhana of Police Station, Chandigarh but no record has been brought on the file by the prosecution to prove this fact and the link evidence regarding custody of the contraband articles till it reaches CFSL is also missing as no witness has been examined to prove that where the RDX remained from 18.9.1995 to 21.9.1995, when it reaches CFSL and in whose custody. Even no affidavit of any of the Police officials with whom it remained and who deposited the same with the CFSL has been brought on the record to prove this link above all although the sample containing the RDX reaches CFSL on 21.9.1995 but it was examined after a period of one month and this incredible delay in examining the samples by PW-165 further raises doubt about the authenticity of the version of the prosecution in this regard. This fact alone

shows that report of PW-165, Roop Singh as to the contents of RDX is relating to some other parcel and if it is so there is no evidence on the file that the alleged recovery made from accused Nasib Singh was actually of RDX and the accused is entitled to be acquitted on this ground alone.

232. Taking the case of the accused Shamsher Singh, learned defence counsel submitted that it is alleged by the prosecution that during the interrogation of accused Jagtar Singh Tara, the name of this accused came to the light and his involvement in the conspiracy was found on the plea that he along with accused, Jagtar Singh Hawara brought the RDX from a Village near Indo-Pak Border near Ajnala in the Truck of PW-107, Sapinder Singh, bearing registration No. PB-12-A-7947 and kept the two bags of the RDX in his house at Village Ukasi and later on this accused admitted the factum of conspiracy and his involvement in this crime in his confessional statement, Ex.PW103/G before PW-103, Dinesh Kumar, then Metropolitan Magistrate, Delhi. However, during the trial, the prosecution has failed to prove its story by even any evidence what to talk of plausible evidence.

233. To substantiate his case, he further submitted that the prosecution of the accused Shamsher Singh is on the basis of the confessional statement, Ex.PW103/G, which was recorded after the

filing of the first charge sheet, as is clear from the supplementary charge sheet submitted against him. But it is not permissible under the law because in the earlier charge sheet the name of this accused was duly mentioned in the list of accused persons showing him as absconding and if it was so the filing of subsequent charge sheet on the basis of further investigations by the prosecution is not permissible under the provision of Section 173 Sub Section 8 of the Cr.P.C as it is admitted case of the prosecution that no permission or the Magistrate or Sessions Court has been taken before making further investigations leading to filing of the supplementary challan.

234. In support of his arguments, he relied upon **Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwandadha Maharaj**, reported in 1999(3) RCR (Criminal), page 587, **Vijay Kumar Versus Kamarudhin** reported in 1999 (2)RCR (Criminal)262, 1999 Cri. L.J. 1294 and **Ravikrindi Ramaswamy and another Vs. State of A.P** reported in 2003 (3) Recent Criminal Reports (Criminal), page 362.

235. He further submitted that even otherwise, there is no evidence on the file to show the participation of this accused either in the conspiracy or in the actual commission of the crime in any manner. It is alleged by the prosecution that name of this accused surfaced during the

interrogation of accused Jagtar Singh Tara. However, neither in the disclosure statement of accused Jagtar Singh Tara nor in his confession made before the Magistrate, the name of this accused has been disclosed by the accused Jagtar Singh Tara. Even in the disclosure statement of accused Balwant Singh his name has not been figured as one of the conspirator. On the other hand, both these accused have named remaining accused persons except Shamsher Singh, Navjot Singh and Nasib Singh.

236. Even none of the prosecution witnesses could name him or give any evidence to link him either with the conspiracy or with the commission of the crime. On the contrary, the entire evidence of the prosecution shows that this accused is falsely implicated in this case when he refused to become a witness against accused Jagtar Singh Hawara etc.

237. To substantiate this plea, he submitted that this accused was arrested by PW-231, Rajesh Kumar allegedly from the court of Special Judicial Magistrate, Patiala but during his cross examination PW-231 admitted that he has not arrested accused Shamsher Singh from the court of Special Magistrate, CBI, Patiala but from the court of SDM, Patiala and as such the entire story of the prosecution to show the arrest of the accused

Shamsher Singh from CBI Court, Patiala, is proved to be a false stand. On the contrary, it shows that accused Shamsher Singh was never arrested nor he was produced before the CBI Court. But his remand was obtained without producing him before the CBI Special Magistrate.

238. At the same time all the safeguards provided by the Hon'ble Apex Court in **D.K.Basu's case (Supra)** have not been complied at the time of the arrest of this accused. Above all, only incriminating evidence brought on the file by the prosecution, to link this accused with the case in hand, is his confessional statement, Ex.PW103/G, recorded by PW-103.

239. However, the prosecution has miserably failed to prove that this confessional statement of the accused is voluntarily made as per the safeguards provided under the law and it has been made without any coercion, pressure or threat. In order to bring home, this plea, he submitted that there are hundreds of reasons which makes this confession inadmissible in evidence and some of the reasons pointed out by learned defence counsel are as below:-

(a) It is admitted case of the prosecution that accused, Shamsher Singh was arrested on 11.12.1995 and he was

taken to Delhi after taking his police remand but despite this his confessional statement was recorded on 16.12.1995 and there is no explanation on the file as to what was done between these five days and the answer to this question is that as stated by this accused, he was tortured and harassed during these five days and was pressurized to suffer a disclosure statement and as such this makes the confessional statement inadmissible in evidence.

(b) It is admitted case of PW-103, D.K.Sharma, Metropolitan Magistrate that the accused was produced before him at 11.30 a.m and he recorded his confession at 3.30 p.m granting him only a time of four hours to reconcile and think over which is insufficient keeping in view the longer custody of the accused with the Police. As per learned defence counsel, the Hon'ble Apex Court in **Sarwan Singh Rattan Singh Vs. State of Punjab reported in AIR 1957, SC 637** laid down certain provision and safeguards required to be taken care of while recording the confessional statement and one of these safeguard is that at least a period of 24 hours should be given to an accused to

think over before recording his confessional statement besides other necessary ingredients. However, in this case, this condition has not been satisfied which makes the confession highly doubtful.

c) Similarly the Hon'ble Apex Court further held that the confession should be recorded as per High Court rules and orders which requires that accused must be questioned extensively to assess that he is making the confession voluntarily and without any pressure, or threat and for this certain specific question have been provided but in this case it is admitted case of PW-103, D.K.Sharma, Metropolitan Magistrate, that he has not recorded specific question as per the High Court rules & orders, which further shows that the confession has been recorded not as per procedure of law. In support of this plea, he relied upon **Ayyub etc Vs. State of U.P reported in 2002 (2) RCR (Criminal), page**

(d) Even PW-103 has not introduced himself before starting recording his confession, as such, there is nothing on the file to show that accused was knowing that he is

being produced before a Judicial Magistrate for recording his statement and from all the proceedings of the confession done by PW 103, there is no mention anywhere that he is conducting these proceedings as Metropolitan Magistrate and no such fact is mentioned by PW-103, while starting recording the confession of this accused which further shows that it has not been recorded as per the procedure of law and thus not voluntarily made confession as stated by this accused, who has retracted from the same immediately when he came to know about the same. In support of this plea, he relied upon **Sanatan Badchat Versus The State, reported as AIR 1953 Orissa page 149**

240. He further submitted that it is admitted case of the prosecution that confessional statement of an accused can be recorded only during the course of investigations or thereafter but before an inquiry or trial. But in the present, the accused was already charge sheeted and committed to the trial in the first charge sheet. As such, recording of his confession during further investigations is not permissible under the law as the provision of Section 164 of the Cr.P.C are applicable only to the confession recorded during

the investigations but before the start of inquiry or trial but in this case, this confession has been recorded in violation of this provision and as such this confession is not admissible in evidence.

241. In support of his plea, he relied upon **Rishi and another Vs. State of Bihar, reported in AIR, 1955 Patna 425, State Vs. Ram Avtar Chaudhry and others, reported in AIR 1955 Allahabad 138, Bachchan Lal Vs. The State, reported in AIR 1957 Allahabad 184 and Ram Singh Versus State reported in AIR 1959 Allahabad 518.**

242. Not even this there is no explanation on the file as to why the production warrant of accused Shamsher Singh was not obtained for securing his arrest in this case and why the permission of Area Magistrate was not obtained and even if accused Shamsher Singh was arrested from Patiala, why he was not immediately produced before CJM, Chandigarh for his further remand despite the fact that the Chandigarh is situated nearer to Delhi. On the contrary, it is alleged by PW-243, that the police remand of the accused Shamsher Singh was taken from Patiala as it was easily available there and accused Shamsher Singh was taken to Delhi without producing him before the Area Magistrate i.e CJM Chandigarh and if it is so, the recording of confession of accused without proper permission of the area Magistrate is bad in

law and makes the confession is highly doubtful. In support of his plea, he has relied upon **State of Rajasthan Vs. Santosh Yadav, reported in 2005 (2) RCR (Criminal) Recent Criminal Reports, page 303.**

243. Even after the filing of the first charge sheet showing the accused Shamsher Singh as absconder, the other accused has moved an application before Sessions Court that accused Shamsher Singh, is already in the illegal custody of CBI since September, 1995 and when the CBI came to know about this application, he was arrested and was taken to Delhi without their being any evidence of conspiracy against him. At the same time, it is admitted case of the prosecution that on 10.12.1995, accused Shamsher Singh was arrested in FIR No.127 for harboring accused Jagtar Singh Hawara but despite this he was also arrested in this case being a conspirator without there being any evidence.

244. Even in the application moved by PW-243 for recording the confessional statement of accused Shamsher Singh, Ex.PW103/A, it is alleged that the accused Shamsher Singh had suffered some disclosure statement but no such disclosure statement has been made part of the record is a fact which is also not explained but which shows that there was no evidence against him.

245. He further submitted that even from the contents of confessional statement, it comes out that the accused was forced to make the same as he was under bonafide apprehension that he will be falsely implicated more seriously by the other witnesses, which further shows that this confession is not a voluntarily made confession but it was with an intention to gain something and to avoid a lesser evil and thus it can not be relied upon for any purpose whatsoever and thus should be discarded.

246. Learned defence counsel further submitted that it is admitted case of the prosecution that name of the accused Shamsher Singh surfaced in the disclosure statement of Jagtar Singh Tara on 13.09.1995, but no efforts were made to arrest this accused till 11.12.1995. Whereas it is proved on the file that this accused was arrested by the Punjab Police on 29.9.1995 itself and he was kept in illegal custody and after torture and harassment he was forced to make confession as apart from the confession, there is no direct or circumstantial evidence on the file to link him with this case.

247. To substantiate this plea, he submitted that PW-107, Sapinder Singh, was the star witness of the prosecution to link this accused with this conspiracy as it is alleged by the prosecution that accused Shamsher Singh, took the Truck of PW 107,

Sapinder Singh to go to a Village near the Indo-Pak Border near Ajnala along with the accused Jagtar Singh Hawara and some other persons. However, during the trial PW-107 failed to prove this theory on the file. On the contrary, he has categorically deposed that he was knowing accused Shamsher Singh, who is related to him and the CBI has pressurized him to depose against the accused about bringing of RDX in his Truck but actually he never accompanied the accused Shamsher Singh or Jagtar Singh Hawara with his Truck to bring any RDX. Although, this witness was declared hostile by the prosecution and was cross examined at length but the prosecution has failed to bring out anything to shatter his testimony which shows the main plank of the prosecution is false.

248. On the other hand, it is proved on the file that this witness was arrested by the Police in a case registered for commission of offences u/s 212 and 216 of the IPC registered vide FIR No.127 of 1995 in Police Station, Sadar Rajpura by the Punjab Police on 7.11.1995 but despite this his statement was recorded in this case only on 15.11.1995. Not even this, it is also proved on the file that this witness has moved a petition u/s 482 of the Cr.P.C before the Hon'ble High Court against the harassment by the CBI and when the CBI came to know about this, his statement was got recorded at Delhi by pressurising him. At the same time, the

two other persons, who allegedly accompanied PW-107 along with Jagtar Singh Hawara and Shamsher Singh, named as Deva and Daljit, have not been examined or even cited as a witness to prove the presence of this witness and his taking of truck on the asking of Shamsher Singh, which further shows that this witness was harassed and forced to depose before the Magistrate.

249. Even the Truck allegedly used by this witness for bringing RDX on the asking of Shamsher Singh has not been taken into possession. Even there is no explanation on the file that how PW-243, came to know the name of PW-107, being concerned with this case and when PW-243 was confronted on this aspect, he alleged that it was PW-248, S.N.Saxena, the Chief Investigating Officer of the case, who directed him to join PW-107 in the investigations but Mr.Saxena has denied this fact. At the same time, no legal aid was granted to PW-107 by PW-108 while recording his statement u/s 164 Cr.P.C. If it is so all these facts & circumstances shows that, as stated by PW-107, he was harassed and maltreated and forced to depose against accused Shamsher Singh. As such, even the testimony of PW-108 proved in vain to link this accused with the offence because as stated earlier PW-107 was kept in illegal custody for about one month and he was pressurized to suffer a statement against accused Shamsher Singh before PW-108 as held by the Hon'ble

Apex Court in **Bolum Bhaskara Rao and another Versus State of A.P, reported in 1985 Cr1.L.J.32**

250. He further submitted that as stated earlier none of the prosecution witnesses stated anything against this accused to link him with the conspiracy and the alleged act of omissions and commissions on his part in bringing the RDX have not been established on record in view of the stand taken by PW-107. Besides this, the confession of this accused is not admissible in evidence and if it is so there is not even an iota of evidence to prove that this accused at any point of time had shared any conspiracy with any of the accused persons as per the ingredients of law and in support of his plea, he has relied upon **Dr.Dattatraya Narayan Samant and others Vs. State of Maharashtra reported in 1982 Cri.L.J. 1025.**

251. He further submitted that even in the authority relied upon by the prosecution in this regard **Shankaria Vs.State of Rajasthan AIR 1978, Supreme Court, page 1248**, the Hon'ble Apex Court held that where after comparing the confession in the light of surrounding circumstances and probabilities coupled with the fact that it was perfectly voluntary, the Court is satisfied then it can be relied upon but in this case both these material facts have not been proved. With these averments, he submitted that the prosecution has

failed to link the accused Shamsheer Singh either with the conspiracy or with the actual commission of the crime in any manner and as such he is entitled for benefit of doubt and liable to be acquitted.

252. Taking the case of accused Gurmeet Singh, learned counsel for accused submitted that as far as accused Gurmeet Singh, is concerned, what to talk of any incriminating evidence against this accused, there is not even iota of evidence, even to link this accused with this case.

253. To substantiate this plea, he submitted that it is undisputed case of the prosecution that occurrence of this case, which took place on 31.8.1995, was a result of conspiracy which was hatched between 20.8.1995 to 31.8.1995. However, there is not even an iota of evidence on the file which could in any where remotely suggests that accused Gurmeet Singh was associated during this period in the conspiracy in any manner.

254. As far as testimony of PWs Avtar Singh, Puran Chand and SP Singh in this regard is concerned, it is totally irrelevant as none of these witnesses has stated anything against the accused Gurmeet Singh and they have not even identified him. Although the prosecution tried to link the accused Gurmeet Singh by way of identity

of this accused through photographs but that identity is not sufficient to link this accused specially when it is undisputed case of the prosecution that no test identification parade was conducted to establish the identity of this accused from any of the witnesses relied upon by the prosecution to link him with this case.

255. To substantiate his case he submitted that it is alleged by the prosecution that the accused Gurmeet Singh is working in BPL Engineering Limited, Chandigarh, which is an admitted fact and he was absent from his duties on 31.8.1995 i.e the date of occurrence, 1.9.1995, 4.9.1995 and 5.9.1995 and during these days, he participated in commission of this crime. However, the prosecution has failed to prove this story. PW-67, T.P.Yadav and PW-64, A.K.Parashar were the two witnesses from the office, where the Gurmeet Singh, was working but these witnesses have failed to prove that the accused was absent on 31.8.1995 and after that.

256. On the contrary, they admitted that accused Gurmeet Singh was arrested from the Office. As per PW-67, Gurmeet Singh was on leave on 31.8.1995 and 4.9.1995, as per the leave card, Ex.PW64/D but that leave card is not signed by the accused, as required under the rules and as admitted by this witness. On the contrary, it proves that the date 31.8.1995 has been

interpolated by changing the digit 2 to 3. As regards 4.9.1995 PW-64, A.K.Parashar has admitted in his statement u/s 161 Cr.P.C that accused Gurmit Singh was on duty on 4.9.1995 and as such his stand in the court that he was absent on 4.9.1995 is an improvement made on the asking of the CBI.

257. On the contrary, both these witnesses have admitted that accused Gurmeet Singh attended the office on 5.9.1995 till after noon, when he was taken away by some persons and then PW-64 admitted that he was taken away by the Police. Even DSP Surinder Pal Singh, who had collected the leave records also admitted that accused Gurmeet Singh was arrested from his office. Thus, this evidence itself proves that accused Gurmeet Singh was present on his duties on 31.8.1995, 2.9.1995, 4.9.1995 and 5.9.1995 which means even after the bomb blast in question, which took place on 31.8.1995 and this fact alone shows that he was not concerned with this occurrence otherwise he would have escaped.

258. Not even this, it is admitted case of PW-67 that every employee working in the company has to prepare a Engineer's daily report and the reports of Gurmeet Singh were also taken into possession by the Police. But these reports have not been made part of the record with a obvious purpose that had it been produced the entire story

of the prosecution will become false as to the absence of this accused on 31.8.1995 and 4.9.1995 and these reports further shows that this accused was attending his office from 20.8.1995 to 31.8.1995, which is the crucial period during which the conspiracy was hatched.

259. He further submitted that it is alleged by the prosecution that PW-99, Chamkaur Singh, was knowing the accused Gurmeet Singh and he was having some association with accused Lakhwinder Singh, Balwant Singh and Dilawar Singh and the prosecution further alleged that on the morning of 31.8.1995, when assassin Dilawar Singh and Balwant Singh, were about to leave the house of PW-99, Gurmeet Singh had also come there to meet them but this theory of prosecution remained unsubstantiated because in his cross examination, this witness admitted that the accused Gurmeet Singh had not come to his house and in his statement u/s 161 Cr.P.C also, he has not mentioned this fact also and as such the testimony of this witness to associate with accused Gurmeet Singh with the remaining accused proved in vain to bring home the conspiracy by the accused Gurmeet Singh.

260. He further submitted that as per the prosecution the belt bomb was prepared in the house of accused Gurmeet Singh and in view of the testimony of PW-55, Reema Kahlon, PW-68, Puran

Chand and PW-63, Avtar Singh and PW-101 Satwinder Pal Singh @ Simpy, it is proved that all the accused persons including Dilawar Singh, Balwant Singh, Jagtar Singh Hawara and Lakhwinder Singh prepared the bomb and when the room of accused Gurmeet Singh was raided on 8.9.1995, some incriminating articles having the traces of RDX were recovered in the presence of PW-160, RS.Verma and PW-70, Parnab Sain. But the prosecution has failed to substantiate its story in this regard.

261. As far as the testimony of PW-55, Reema Kahlon is concerned, she was allegedly working in the PCO of PW-63, Avtar Singh, in the ground floor of the room, where the accused Gurmeet Singh was residing and she alleged that 2-3 days prior to 31.8.1995, she had seen 3-4 persons coming to the house of accused Gurmeet Singh and she allegedly identified the photographs of some of those persons including that of Dilawar Singh but she failed to identify any of the accused in the court. On the contrary, in her cross examination, she admitted that while sitting in the booth she could not see the stairs or the room of the Gurmeet Singh and she further admitted that as far as the name of the persons used to visit Gurmeet Singh is concerned, it was disclosed to her by the CBI and if it is so, the testimony of this witness is of no relevance as far as accused Gurmeet Singh is concerned.

262. Similarly PW-63, Avtar Singh, who is the owner of the room, where accused Gurmeet Singh, was residing along with PW-101, Satwinder Pal Singh @ Simpy, failed to say anything incriminating against this accused as his only stand was that initially PW-101, Satwinder Pal Singh @ Simpy was inducted as a tenant in his room and later on he brought accused Gurmeet Singh as a co-tenant and both of them started residing there. Apart from this, he stated nothing against accused Gurmeet Singh. On the contrary, he admitted that after the occurrence of blast on 31.8.1995 PW-101, S.P.Singh @ Simpy was absconding from the room and he had also taken away his belongings and if it was so, the conduct of PW-101 was suspicious but as far as accused Gurmeet Singh is concerned, he continued to reside in this room till his arrest.

263. Similarly, the testimony of PW-68, Puran Chand is also not relevant as he has also simply alleged that he has seen some persons while visiting the room of accused Gurmeet Singh and he identified the photographs of those persons during the investigation and also in the court and then he identified the accused in the court on the basis of the photographs but that identification is irrelevant and meaningless because no test identification parade was conducted by the Police to establish the identity of any of the accused persons from this witness and as such identified by

way of photo graph is irrelevant.

264. He further submitted that as far as the testimony of PW-101, Satwinder Pal Singh @ Simpy, is concerned, it is also not admissible in evidence because this witness has disclosed the name of the accused persons under the pressure of the Police. To substantiate this plea, he submitted that when PW-101 was examined for the first time on 4.12.1999, he had not identified any of the accused persons except accused Gurmeet Singh. On the contrary, his act and conduct was so suspicious that the only inference which can be drawn was that he is pressurized by the Police to depose and because of that pressure he collapsed in the court during his testimony and earlier also he was weeping and confused and upset.

265. Not even this, he has alleged that he along with accused Gurmeet Singh took this room jointly whereas the owner of the house, Avtar Singh, had categorically deposed that it was this witness, who took the room on rent alone and later on he joined Gurmeet Singh as a co-tenant. Not even this he admitted that on 28.8.1995, when the friends of the accused Gurmeet Singh visited his room, he was not knowing any of them except accused Dilawar Singh and it was Gurmeet Singh, who introduced his friends as Lakhwinder Singh, Balwant Singh and Bhai Ji and later on he came to know that

the real name of Bhai Ji was Jagtar Singh Hawara.

266. Not even this he further admitted that in the month of January, 1996 the accused Balwant Singh and Jagtar Singh Hawara were shown to him by the CBI. Above all he admitted that on 31.8.1995 accused Gurmeet Singh was very much present in the room whereas after 31-8-1995, PW-101 stopped residing in the room and never visited the same even to take his belongings and this fact shows that it was this witness, who was absconding after 31-8-1995 and just to save himself from the hands of the CBI, he became a witness and during his cross examination, when he was again asked to identify the accused persons by name, he failed to identify the accused persons except accused Gurmeet Singh and Balwant Singh. Thus the testimony of this witness is not reliable as far as the disputed question of participation of accused Gurmeet Singh in conspiracy as well as its execution is concerned.

267. He further submitted that as far as the identification of the accused persons by photographs and then in the court is concerned, it is also of no consequences and can not be made basis to establish their identity because in **D.Gopala Krishanan Versus Sadanand Nayak, AIR 2004, SC, page 4965**, the learned Apex Court held that if during the course of investigation, the witness had

given the identifying features of the assailants, the same could be confirmed by the Investigating Officer, by showing the photographs of the suspects but not a single photo graph. However, if the suspect is available for identification or for video identification, the photographs shall never be shown to the witness in advance and if during the investigations, the Police has shown the photographs of the accused to the witnesses despite the fact that the witnesses were neither knowing them nor gave any identifying features and then those witnesses identifies the accused in the court, such a identification is not admissible.

268. Similarly, in the present case, none of the witnesses were associated with Gurmeet Singh or either knowing him or provided his identifying features, as such showing them the photo graph of this accused and then identification of this accused by those witnesses including PW-68 Puran Chand, Avtar Singh is of no consequences and the prosecution was required to conduct a test identification parade to establish the identity. Similarly in **Laxmipat Choraria Versus State of Maharashtra AIR 1968, SC, page 938**, the Hon'ble apex Court held that identification of a suspect by the witnesses on the basis of photographs in the court or in the identification parade is worthless and can not be made basis for the conviction of the accused.

269. At the same time, it is admitted case of prosecution that no test identification parade was conducted to establish the identity of any of the accused persons associated with the conspiracy. On the contrary either the accused have been shown to them during the investigations or their photographs have been shown and then they have been asked to identify the accused persons despite the fact that they have neither disclosed the vital statistics regarding the identity of the accused persons nor their name or any other description and if it is so the testimony of all these witnesses is irrelevant.

270. In support of this plea, he has relied upon **Jaimal Singh Versus The State of Haryana**, reported in AIR 1988 (2) Recent Criminal Reports, page 58, **Man Singh and ors Versus The State of Haryana**, reported in 1984(2) Recent Criminal Reports, P&H page 379, **Ramanathan Versus The State of Tamil Nadu** reported in AIR 1978 Supreme Court, page 1204, **Rakesh Harilal Kahar Versus State of Maharashtra** reported in AIR 2007(2) RCR Criminal, page 325, **Khan Singh @ Ujagar Khan and Chhotey Versus State**, reported in 1997 CRI.L.J.2305, **Mahendra Singh Versus State of U.P.**, reported in 1991 CRI.L.J. 1381, **State (Delhi Admn) Versus V.C.Shukla**, reported in AIR 1980 Supreme Court, page 1382, **Shaikh Umar Ahmed Shaikh and another versus State of Maharashtra** reported in AIR 1998

Supreme Court, page 1922.

271. Similarly, he further submitted that the prosecution has also failed to prove the recovery of any incriminating articles from the house of accused Gurmeet Singh and its link with the conspiracy and execution of the same. As per learned defence counsel, it is alleged by prosecution that PW-237, A.K.Ohri, after the arrest of accused Gurmeet Singh, raided his house at Patiala and as per recovery memo, Ex.PW-237/1, some articles were recovered but none of those articles were incriminating.

272. At the same time, at the time of the arrest of accused Gurmeet Singh, as per arrest memo Ex.PW51/4, the address of house of the accused, as resident of H.No.981 Phase IV Mohali, was known to the Investigating Officer and if it was so, he was required to raid that house immediately but instead of doing so, he raided the house at Patiala, which has no link with the offence.

273. On the contrary, the house of Gurmeet Singh at Mohali was allegedly raided on 8.9.1995, which fact can not be believed on the face of it. As such, all the proceedings showing the making of disclosure statement, Ex.PW68/A by accused Gurmeet Singh on 8.9.1995, in the presence of PW-70, Parnab Sain and PW-68, Puran Chand and recovery of

incriminating articles on the basis of these statements is totally irrelevant and highly doubtful.

274. To substantiate this plea, he submitted that it is alleged by the prosecution after making of disclosure statement by accused Gurmeet Singh, when the house of the accused Gurmeet Singh was raided at Mohali, PW-160 R.S.Verma were also associated. However, the presence of this witness during search and seizure proceedings is highly doubtful, as he admitted that the recovery memo, Ex.PW68/B, vide which some articles were recovered from the house of accused Gurmeet Singh, is not signed by him, and there is no explanation in this regard. It is further alleged that PW-160 examined the incriminating articles then and there in the room of Gurmeet Singh but no report was prepared by him in this regard at the spot which further belies his presence during the recovery proceedings.

275. At the same time, it can not be believed that the particles of RDX and all the articles used to prepare the belt bomb will be scattered by the accused persons in his house as alleged. On the contrary, this story is highly unbelievable specially when it is proved on the file that after the occurrence of 31.8.1995, accused Gurmeet Singh is admittedly residing in his room up to 5.9.1995 and he being an Engineer will not left any

incriminating particles or articles containing the traces of RDX in his room and he will not allow the presence of any such material there. Had he been involved in conspiracy the first thing he would have done would be the cleaning of his room and this fact alone shows that this entry story is bogus and fabricated.

276. Above all, the entire story of the prosecution that the belt bomb was prepared in the house of Gurmeet Singh stands falsify from the confession of accused Balwant Singh, who in his confession, categorically stated that the belt bomb was prepared by him and Jagtar Singh Hawara on 26.8.1995 itself and on 27.8.1995 some splinters etc were added in the same to complete the bomb. If it is so, there was no occasion whatsoever to take the services of accused Gurmeet Singh for the preparation of bomb at his premises as alleged specially when he is not a ballistic expert but he is simply an electrical engineer.

277. Not even this, even in the confession of accused Jagtar Singh Tara, there is no mention of any preparation of Belt bomb in the house of accused Gurmeet Singh, which further falsify the stand of prosecution and shows that there is no evidence on the file to link this accused with the conspiracy or its execution.

278. Lastly he submitted that the other material rather the most material witness of the prosecution leading to unearth the entire conspiracy is PW-51, Surinder Sharma, who allegedly painted the Car No DBA-9598 between 26.8.1995 to 30.8.1995 on the asking of accused Lakhwinder Singh, Balwant Singh and Gurmeet Singh. It is alleged by the prosecution that this witness has disclosed the identity of the accused Gurmeet Singh and Lakhwinder Singh as the person, who came to him for the painting of the car. If it is so, this witness must be knowing or capable of identifying both these accused persons.

279. However, it is admitted case of the prosecution that on 5.9.1995 when both these accused persons were arrested by PW-238, Vijay Kumar Inspector, both PW-51, Surinder Sharma and another witness Balwinder Singh (who has not been examined by the prosecution) were present and on their identity accused Lakhwinder Singh was arrested and thereafter on the identity of accused Lakhwinder Singh, accused Gurmeet Singh was arrested in the presence of PW-51, Surinder Sharma and Balwinder Singh, which means both these witnesses have seen the accused, Gurmeet Singh and Lakhwinder Singh.

280. However, despite this on 6.9.1995, when these accused persons were arrested by the CBI and

were produced before the court of area Magistrate at Chandigarh, with muffled faces, both of them moved an application seeking their identity from both these witnesses, fully knowing the repercussion, because they were sure that both PW-51 and Balwinder Kumar will not identify them as they never went to his shop for the painting of the car and they were never known to both these witnesses.

281. However, this application of accused persons was contested by the prosecution despite the fact that it is admitted case of PW-247, R.S.Punia that he produced both the accused Lakhwinder Singh and Gurmeet Singh with muffled faces, with an obvious purpose to move for an test identification parade from the witnesses. However, despite this request of defence counsel for conducting a test identification parade from the witnesses was declined by the area Magistrate on the plea of the prosecution that they have no eye witness for conducting the test identification parade. This stand of prosecution was highly objectionable and was false as PW-51 and Balwinder Kumar were the two material witnesses, as far as the identity of accused Gurmeet Singh as one of the persons met him for painting of the car, is concerned. Had the request of the accused persons been allowed, the Cat must have been out of bag as PW-51 and Balwinder Singh would not be able to

identify them and the story of prosecution would have become false then and there.

282 However, this right has been denied to the accused persons and if it is so benefit of doubt must be given to the accused persons by drawing adverse inference, as per the law laid down by the Punjab & Haryana High Court in **Joginder Singh @ Naginder Singh Versus State of Punjab, 1974 CLR, page 588** where the Hon'ble High Court held that where the request of the accused to conduct the test identification parade has been declined so as to deny a right to set up a defence of his choice by the accused persons, its benefit must go to them. Similar principle was reiterated by the Andhra Pradesh High Court in **Gaddam Vijaya Bhaskara Reddy and others Versus State of A.P reported in 1999 CRL.L.J., page 2715.**

283 Even otherwise testimony of PW-51 is of no consequences as far as the identity and link of accused Gurmeet Singh is concerned. First of all PW-51 has admitted that he was not knowing accused Gurmeet Singh prior to this occurrence. At the same time, he alleged that accused Gurmeet Singh, Lakhwinder Singh came to him from 26.8.1995 to 28.8.1995 for getting the car re-painted but this stand of PW-51 is falsified from the confession of accused Balwant Singh, wherein he has alleged that on 26.8.1995 he was at Patiala throughout the day

and it was accused Jagtar Singh Tara and Paramjit Singh, (who is being tried separately) who were directed to get the car re-painted and the name of Gurmeet Singh and Lakhwinder Singh was never there.

284. To further substantiate this plea, learned defence counsel submitted that as per PW-51 on 26.8.1995 accused Lakhwinder Singh came to the shop with three persons, two of whom were Sikh Gentleman and one without turban, which were later on identified as accused Gurmeet Singh and Balwant Singh and deceased Dilawar Singh and they asked him to re-paint the Car No. DBA-9598 in white colour and thereafter from 28.8.1995 to 30.8.1995 the accused Gurmeet Singh and Lakhwinder Singh came to him for getting the delivery of the car. However, this theory was never disclosed by accused Balwant Singh or accused Jagtar Singh Tara in their confessions.

285 On the contrary, accused Balwant Singh alleged that he was at Patiala on that date throughout the day. At the same time, the CBI has intentionally introduced PW-50, Tirlok Nath @ Tota, and PW-48, Ranjit Singh, just to corroborate the false stand of PW-51, who has otherwise proved to be not known to any of the accused persons personally. The name of any of these witnesses do not figure in the statement of PW-51, under section 161 Cr.P.C, recorded by the Chandigarh Police.

286 Not even this, the prosecution has also introduced two other witnesses PW-114, Dalbir Singh @ Maulla and PW-69, Madanjit Singh @ Channa, again to lend corroboration and to show the proximity of PW-51, Surinder Sharma with Lakhwinder Singh and even the name of these two witnesses do not figure in the statement of PW-51 recorded by the Chandigarh Police.

287. Above all PW-51 further admitted that till 6.9.1995 he was not knowing about the identity of any other accused persons except accused Lakhwinder Singh and he further admitted that he identified three other persons, who came along with accused Lakhwinder Singh, on the basis of photographs and he has nowhere given the description of any of the accused persons in his statement recorded by the Chandigarh Police or by the CBI.

288 On the contrary, during his evidence, first of all photographs of three accused persons including Gurmeet Singh were shown to him and then he was directed to identify and he identified them. Not even this for the first time, he appeared for statement on 26.2.1997 but on that day, apart from identifying accused Lakhwinder Singh, he had not identified any of the accused persons. On the contrary, on the next date of hearing i.e 27.2.1997 he identified the remaining accused persons that

too when the photographs were shown to him. Thus, it is clear that this witness was never knowing the name or identity of all the remaining accused persons and if it is so the testimony of PW 51 leads no where.

289 Even the story of the prosecution that on 28.8.1995 accused Gurmeet Singh & Lakhwinder Singh went to PW-51 to collect the Car is further falsified by accused Balwant Singh, who in his confession admitted that on 28.8.1995 the Car was already with him and he along with Jagtar Singh Tara & Dilawar parked the car near Gurudwara, Phase-IV Mohali.

290. Not even this, there are glaring discrepancies and material improvement in the testimony of PW-51 and the other prosecution witnesses related to this theory and all these makes his testimony highly doubtful. To substantiate this plea, he submitted that he has introduced in a new theory when he alleged that after seeing the photo graph of the car in the news paper, he talk to Inspector Ram Kumar of Chandigarh Police and on his asking, Ram Kumar Inspector took him to DSP Abrol and then his statement was recorded. This stand was never taken by the witness in his statement u/S 161 Cr.P.C. Not even this, there is nothing on the file to show that how DSP Abrol was concerned with the

investigation of this case, when the investigation of the case were already handed over to the CBI on the night of 31.8.1995 itself. The prosecution has not examined DSP Abrol to explain this material fact which further raises doubts about the stand of PW-51.

291. Even the recovery conducted by the Police at the time of arrest of accused, Gurmeet Singh, is highly doubtful and the recovery of chit, Ex.PW51/5, is by way of padding and it can not be believed that the accused, Gurmeet Singh, will kept in his pocket such a chit, if he is actually involved in the conspiracy and the crime. This fact further shows that all the proceedings of the police relating to the arrest, recovery and link of this accused with the case in hand is highly doubtful and this accused is entitled for benefit of doubt.

292. Taking the case of accused Lakhwinder Singh, learned defence counsel submitted that it is alleged by the prosecution that this accused was also associated in the conspiracy and he along with accused Gurmeet Singh, Dilawar Singh and Balwant Singh got the car re-painted fully knowing that the car will be used to kill Beant Singh. However, there is not even an iota of evidence on the file to prove this stand of the prosecution.

293. On the contrary, it is proved on the file that this accused was not even present at Chandigarh during the time of conspiracy and the bomb blast, as it is proved on the file that accused Lakhwinder Singh, who is a constable posted in the security wing of Punjab Police, was sent on duty as driver with Sant Ram Singla, then Member Parliament (since dead) on 11.7.1995 and vide daily dairy no.9 dt.11.7.1995, as proved on the file by DW-12, he left for Delhi and never came back till 1.9.1995, when he came to Chandigarh to get his salary. On 1.9.1995 he was arrested by the CBI and he was kept in illegal custody and after torture, he was linked with this case.

294. He further argued despite the fact that the accused Lakhwinder Singh being the Constable, was required to inform his seniors about his duties and leave etc, the prosecution has not collected any evidence to show that during the alleged period of conspiracy and blast, he was not on duty or he was on leave. On the contrary, DSP Surinder Pal has taken into possession the service record of this accused but the entire record as mentioned in recovery memo, Ex.PW241/1, is prior to 11.7.1995 and there is no record with the Police, even in the service book, to show that the accused was at Chandigarh during said period.

295. Even in the service book of this accused,

Ex.PW241/2, there are no entry after 28.6.1995 whereas, as per the index attached with the service book, it is mentioned that all the transfers beyond the District are to be entered in this service book. But the relevant page of the service book in this regard is missing. As such, the stand of prosecution that the accused Lakhwinder Singh was posted in Intelligence Wing of Punjab Police upto 31.8.1995, is without any basis and PW Surinder Pal Singh had failed to substantiate this fact.

296. On the contrary, he admitted that he had not seen the service record regarding the posting of accused Lakhwinder Singh after 11.7.1995 to 31.8.1995 despite the fact that the relevant dates regarding the conspiracy and participation by this accused were 26.8.1995 to 31.8.1995. He has not collected any record to show whether the accused was on leave or on duty during that period.

297. Thus, instead of conducting the investigation in the proper prospect and right direction, he has manipulated the records and failed to take the relevant record, which shows that the investigations are highly tainted. Even PW-59, C.Balwinder Singh, examined by the prosecution admitted that after working for about 5-6 months after December, 1994, accused Lakhwinder Singh was posted out. If it is so, participation of accused Lakhwinder Singh in the conspiracy during

the relevant period is completely ruled out.

298. At the same time the entire story of the prosecution to link him with this case proved in vain. PW-159, C.Gurbachan Singh, failed to identify the accused Lakhwinder Singh in court and as such his testimony is immaterial. Similarly, PW-197, C.Ranjit Singh, who is also police constable is also not relevant as he has only identified the accused Lakhwinder Singh, while opening account in the Bank and the stand of this witness that deceased Dilawar Singh also visited him is a false stand as he admitted that he disclosed this fact for the first time in the court.

299. Similarly, evidence of PW-162, C.Sukhwinder Pal Singh is also of no consequences as all he says is about the visit of deceased Dilawar Singh to the house of Lakhwinder Singh, which is not an incriminating circumstance to link the accused Lakhwinder Singh with the conspiracy. Even PW-191, C.Darshan Singh says so as was stated by PW-162 but his testimony is not relevant for the same reason. On the contrary, he admitted that accused, Lakhwinder Singh was transferred to Delhi and he had given him some references of his friends.

300. As per learned defence counsel, as far as the testimony of PW-99, Chamkaur Singh, is

concerned,as discussed earlier, again he has only deposed that he had seen the accused Lakhwinder Singh on the morning of 31.8.1995, which by itself is not of any use for the prosecution. Similarly the stand of PW-101, Satwinder Pal Singh, is also not relevant,as far as the identity of accused Lakhwinder Singh by this witness, is concerned. On the contrary, when PW-101 was examined for the first time on 4.12.1999, he had not identified any of the accused persons except accused Gurmeet Singh. On the contrary, his act and conduct was so suspicious that the only inference which can be drawn was that he is pressurized by the Police to depose and because of that pressure he collapsed in the court during his testimony and earlier also he was weeping and very confused and upset.

301. Not even this, he admitted that on 28.8.1995, when the friends of the accused Gurmeet Singh visited his room, he was not knowing any of them except accused Dilawar Singh and it was Gurmeet Singh, who introduced his friends as Lakhwinder Singh, Balwant Singh and Bhai Ji and later on he came to know that the real name of Bhai Ji was Jagtar Singh Hawara.

302. Even otherwise, he has also identified the all the accused persons including accused, Lakhwinder Singh, on the basis of photographs shown to him during the investigations and during his

testimony and as such the said identification is of no consequences specially when no identification parade was conducted to establish the identity of this accused from that witness. Not even this during his cross examination when he was asked to identify the accused persons by name, he failed to identify any of the accused persons including Lakhwinder Singh. As such, his testimony has no relevancy as far as the identity of accused Lakhwinder Singh, his participation in the conspiracy and its execution is concerned.

303. Even the testimony of PW-51, Surinder Sharma is not sufficient to link this accused. To substantiate this plea, he submitted that as discussed earlier, PW-51, Surinder Sharma, was not knowing any of the accused persons and he has introduced the name of accused Lakhwinder, Gurmeet etc under the pressure of the Police and his stand that it was accused Lakhwinder Singh and co-accused, who got the car re-painted from him is already falsified from the confession of accused Balwant Singh & Jagtar Singh Tara, who alleged that it was accused Paramjit Singh, (who is being tried separately), who was assigned the duty of repaint of the car and not Lakhwinder Singh and if it is so, the stand of PW-51, is false as far as the identity of accused Lakhwinder Singh and his participation in the conspiracy and its execution is concerned.

304. Similarly as stated earlier, no test identification parade was conducted despite the asking of accused Lakhwinder Singh to do so. If it is so, the stand of prosecution that accused Lakhwinder Singh was known to PW-51 is also proved to be false.

305. Even PW-185, Mewa Singh, who was running a tea shop near the Secretariat had failed to identify accused Lakhwinder Singh and failed to depose against him and as such his testimony is also irrelevant. Similarly testimony of PW-164, PC Sharma and PW-163, Raj Mohan, in whose presence search of the house of accused, Lakhwinder Singh, was conducted, is also irrelevant as nothing incriminating was recovered from the house of accused.

306. As far as the testimony of PW-113, Surinder Kumar is concerned, he has alleged that after the third day of the occurrence, he along with Lakhwinder Singh and PW-114, Dalbir Singh @ Maula had taken liquor but apart from this he has not stated anything, so his testimony is also of no use to the prosecution.

307. He further submitted that it is alleged by the prosecution that during the search of accused Lakhwinder Singh, a chit, Ex.PW51/3, was recovered

and later on, the hand writing of chit was compared with the specimen hand writing of this accused taken in the presence of PW-112, Chunni Lal and it matches with the disputed chit and thus links the accused with this blast. However, this theory of the prosecution is not tenable in the eyes of law nor there is any evidence to prove this fact. First of all, neither the consent of accused Lakhwinder Singh nor the permission of the Area Magistrate to take the specimen hand writing and signatures of accused were obtained. The testimony of PW-112 and PW-105 in whose presence the specimen hand-writing of accused, Lakhwinder Singh, has been allegedly taken is of no use to the prosecution, as they have not identified the accused Lakhwinder in the court nor the accused was identified by them at the time when the specimens were taken. Even the DSP in whose presence the specimen were taken has not been examined. As such, it makes the entire proceedings illegal and no reliance can be placed on this evidence.

308. Secondly, PW-166, T.R.Nehra, who has allegedly compared the specimen hand writing of accused Lakhwinder Singh with the hand writing on the chit, Ex.PW51/3, found that it is not matching with the so called admitted hand writing and signatures of the accused Lakhwinder Singh. As such, this theory remained unproved and belies the entire case of the prosecution.

309. Similarly, testimony of PW-97, Shanker Lal Yadav, who was running a dhaba near Secretariat and it is alleged that the accused Lakhwinder and PW-114, Maulla allegedly took meals at his Dhaba on 31.8.1995, is also of no consequences as he failed to identify the accused in the court. The stand of PW-111, Mohan Lal, regarding the association of accused Lakhwinder Singh, with the remaining accused persons, is also based on a cock and bull story and is not reliable as the alleged visit of these accused persons is in the month of May, 1995, when the conspiracy was not even conceived. At the same time, none of the accused was known to this witness prior to this occurrence and he identified them only on the basis of photographs, which is already held to be not admissible.

310. Similarly, PW-69, Madanjit Singh @ Channa is also a procured witness, who has allegedly introduced accused Lakhwinder Singh to PW-51 along with PW-114, Dalbir Singh @ Maulla. However, this witness in his statement to Police failed to name PW-114, Dalbir Singh @ Maulla, to be present at the time of introduction. At the same time, this witness also admitted that on 2.9.1995, he took liquor and what happened there after is not known to him. Lastly, he also admitted that PW-114, Dalbir Singh @ Maulla is drug addict and he also used to take drug and this fact alone shows that he

is a procured witness and introduced just to link the accused Lakhwinder Singh with the crime. This fact is further clear from the statement of this witness, who admitted that he did not know how accused Lakhwinder Singh was arrested by whom and when his house was arrested despite the fact that he disclosed that he was close friend of accused Lakhwinder Singh. Similarly, the Police official, who recorded the statement of this witness was not examined to explain how he came to know about the identity of this witness and how he linked this witness.

311. Similarly, as far as PW-114, Dalhir Singh @ Maulla, is concerned, it is proved on the file, he is illiterate, poor and drug addict, as such he was an easy prey for the CBI to introduce as a witness. But his testimony is also proved in vain to bring home the case of the prosecution. To substantiate his plea, he submitted that there is no evidence on the file as to how the police came to know about the identity of this witness. DSP Harbhajan Ram, who has allegedly recorded the statement of this witness has not been examined as a witness specially when PW-51, who was the star witness of the prosecution on this aspect has not disclosed the name of this witness. As such, the testimony of this witness is also based on concocted fact and he has been introduced by the CBI later on just to corroborate the stand of PW-51.

312. He further submitted that the theory of the prosecution that the accused Lakhwinder Singh, is the owner of Scooter No. PCP-2085 and the same was used by him in the commission of crime, is also not proved on the file as it is admitted case of the prosecution that accused Lakhwinder Singh is not the registered owner of this Scooter. On the other hand, it is admitted case of the prosecution that the scooter was owned by PW-45, Vijay Kumar Chopra, who sold it to PW- 47, Harjit Singh. It is alleged that PW-47, Harjit Singh sold this Scooter to PW-54, Deepinder Mehta and then said Deepinder Mehta sold it to accused Lakhwinder Singh. However, there is no receipt or record to show that PW-47 ever sold the scooter to PW-54. The affidavit Ex.D9 is no document in the eyes of law as it is not attested by any Magistrate or Oath Commissioner and it is without date month or year. Statement of PW-54, Deepinder Mehta regarding sale of Scooter to Lakhwinder Singh as per receipt, Ex.PW54/1, is based on after thought.

313. As a result the fact remains that the scooter in question, Ex.P80 still stands in the name of PW-47, Harjit Singh and there is no document whatsoever on the file which was handed over to accused Lakhwinder Singh with regard to sale of Scooter to him. The alleged receipt, Ex.PW54/2 can not be termed as a receipt and in his

cross examination PW-54, Deepinder Mehta, failed to disclose the date when this transaction took place and also admitted that in his statement u/s 161 Cr.P.C. it is nowhere mentioned that two receipts were prepared and one was handed over to the mother of Lakhwinder and other was obtained by him he had come to Chandigarh for this transaction and thus there is no evidence on the file to link the scooter with accused Lakhwinder Singh. As such this evidence is also insufficient to link the accused with the conspiracy.

314. He further submitted that last piece of evidence relied upon by the prosecution against the accused is making of an extra judicial confession by accused Lakhwinder Singh before PW-114, Dalbir Singh @ Maulla but as stated earlier the testimony of Dalbir Singh @ Maulla is otherwise not reliable and there is no evidence on the file that why accused Lakhwinder Singh will confide with PW-114, Dalbir Singh @ Maulla specially when he is having no relationship with him and at the same time PW-114 is not in position to help him being a poor and illiterate drug addict.

315. Thus the alleged extra judicial confession of this accused is also a waste paper and is not admissible in evidence specially when it is admitted case of PW-114, that accused Lakhwinder Singh suffered so called extra judicial confession,

when he was under the influence of liquor and the Hon'ble Supreme Court in **C.K.Raveendran Versus State of Kerala reported in AIR 2000 Supreme Court, page 369**, held that an extra judicial confession made by an accused under the influence of liquor cannot be said to be voluntarily and truthful one and liable to be excluded from the preview of consideration. Not even this, the extra judicial confession made to an unknown person is a weak type of evidence as held by the Hon'ble Punjab & Haryana High Court in **Gopi Chand Versus State of Haryana, 2005 (4) RCR, Criminal, page 778**.

316. At the same time, this confession has not been corroborated by any evidence and thus becomes inadmissible in evidence as held by the Hon'ble Punjab & Haryana High Court in **State of U.T Chandigarh Versus Rakesh Kumar, 2002 (3) RCC, page 472**.

317. Similarly, there is no explanation on the file as to why accused Lakhwinder Singh waited for 3 days for making the confession before PW-114, who is alleged to be his friend, which further makes this extra judicial confession inadmissible in evidence as per the law laid down in **Satinder Pal Singh Versus State of Punjab, 2005 (4) RCR Criminal, page 494**.

318. Lastly he submitted that as discussed

earlier credibility of PW-114, is already proved to be very low because of his status and antecedents and there is no explanation as to for what motive accused will make confession to PW-114 and why he reposes confidence in PW-114, who is man of weak character and bad habits and it further makes the theory of extra judicial confession a concocted piece of evidence and thus not reliable as held by the Hon'ble Supreme Court in **Heremba Brahama Versus State of Assam, AIR 1982 SC, page 1595**. He accordingly concluded that this evidence also proved in vain to link the accused with this case.

319. The learned defence counsel further submitted that it is alleged by the prosecution that on 1.9.1995 PW-178, S.K.Chadha inspected the Car No. DBA-9598, Ex.P76, and as per his report, Ex.PW178/1, lifted various chance finger prints available on the car and there after when he compared those finger prints with the specimen finger prints of accused Lakhwinder Singh and other accused persons, he found that one of the finger prints, mark Q-4, is identical to the specimen thumb impression, LTS 24, of accused Lakhwinder Singh as per his report, Ex.PW178/5, which links the accused Lakhwinder Singh with the case in hand.

320. However, during his cross examination this witness could not substantiate his report and admitted that the specimen finger prints of

accused, Lakhwinder Singh, are different from the questioned finger print, Q-4, as to its character as well as formation of patterns. He admitted that the questioned finger print, Q-4, is of double loop composite pattern and so is the specimen thumb impression LTS 24, where as he further admitted that arch type ridges of right side of LTS 24 is not available in Q-4 and there is no **lake** in LTS 24 but it is in Q-4.

321. Even otherwise as held by the Hon'ble Apex Court in **Mohd Aman Versus State of Rajasthan, AIR 1997, Supreme Court, page 2960**, if the finger prints are not taken before the Magistrate, it can not be made basis to convict a accused as possibility of tempering and fabrication of the evidence cannot be ruled out. Similarly these can not be made basis as the consent of the accused was also not obtained before taking the specimens as held by the Hon'ble Apex Court in **State of U.P. Vs Ram Babu Mishra, 1980 CLR, page 196** and **Bhola Ram Vs State of Punjab, 1991 (1) CLR, page 382**.

322. As such, he submitted that this evidence of the prosecution can not be made basis to link the accused with this case and resultantly, there is no cogent and reliable evidence on the file to link the accused Lakhwinder Singh and he is liable to be acquitted.

323. Taking the case of accused Jagtar Singh Hawara, learned defence counsel submitted that it is alleged by the prosecution that this accused was the main person, who hatched the conspiracy and motivated the remaining accused persons to participate in the same on the behest of Wadhawa Singh and Mehal Singh, propounder of Babbar Khalsa International based in Pakistan and there after he joined hands with remaining accused persons and decided to kill Beant Singh with the help of a human bomb by using RDX. And to achieve this purpose, he brought RDX with the help of accused Shamsheer Singh in the Truck of PW-107, Sapinder Singh and then prepared the bomb and kept some part of the RDX in the house of accused Nasib Singh, who was also knowing about the conspiracy and was part and parcel of conspiracy.

324. However, there is not even an iota of evidence against this accused, which could remotely link him either with the Babbar Khalsa International or Wadhawa Singh and Mehal Singh or with the conspiracy to kill Beant Singh and its execution in the manner suggested by the prosecution. On the contrary the entire evidence suggests that the conspiracy if any was hatched not in Pakistan but in other countries.

325. To substantiate this plea, he further submitted that the first piece of evidence relied

upon by the prosecution to link this accused is the statement of PW-109, Inderjit Singh, before whom Charanjit Singh of Ghaziabad has disclosed that accused, Jagtar Singh Hawara, confessed before him(Charanjit singh) that accused Jagtar Singh Hawara and his associates had killed the Beant Singh. However, on the face of it, the statement of PW-109 is not admissible in evidence being based on hearsay evidence. At the same time, PW-109 has failed to corroborate this theory of prosecution and totally disowned his statement allegedly made by him to the CBI u/s 161 of the Cr.P.C. On the other hand, he alleged that he was detained by the Police and CBI illegally and was tortured and this fact alone shows that the Police tried to create evidence to link this accused without there being his link.

326. He further submitted that it is alleged by the prosecution that Truck of PW-107, Sapinder Singh was used by the accused Jagtar Singh Hawara and Shamsher Singh to bring RDX from a Village, near Ajnala, near the Indo-Pak boarder. However, when he stepped into the witness box, he deposed that he never took his truck to bring RDX as alleged by the prosecution either on the behest of Shamsher Singh or Jagtar Singh Hawara. On the contrary, he alleged that he was picked by Punjab Police on 28.10.1995 and was kept in illegal custody till 14.12.1995, when he was handed over to

the CBI and then he was forced by the CBI to depose against the accused persons and under that threat he was forced to make a statement under Section 164 of the Cr.P.C. At the same time, when this witness has appeared in the witness box, he has not supported the story of the prosecution. On the contrary, he had even denied making of a voluntary statement u/s 164 of the Cr.P.C and thus his testimony also proved in vain to link this accused with this case in any manner.

327. Similarly, testimony of PW-74, Amrik Singh, who is a taxi driver is also of no consequences as he failed to identify any of the accused persons including the accused Jagtar Singh Hawara as one of the person, who traveled in his taxi from Patiala to Mohali. At the same time, PW-231, who has recorded his statement, has failed to explain how he came to know about the identity of this witness. As per PW-231 it was the Chief Investigating Officer Saxena, who asked him to record the statement of this witness but DSP Saxena has denied this fact. On the contrary in his cross examination, this witness admitted that he was taken to Delhi by the Punjab Police and was asked to make the statement. But since he failed to identify the accused his testimony proved in vain to link any of the accused with the case.

328. He further submitted that PW-132, Vinod

Kumar, Manager of Surya Guest House, Delhi had allegedly identified the accused Jagtar Singh Hawara and Balwant Singh, as the two persons who came to see accused Manjinder Singh since absconding but this stand of this witness is not plausible and admissible as first of all, he was shown the photographs of the accused persons and he identified the accused on the basis of the photographs and that identity is not admissible in evidence as discussed earlier. At the same time, the entry relating to check in by Manjinder Singh only for 4-5 hours is seems to be a fabricated entry and lastly it can not be believed that a Manager of Hotel remember the faces of the persons after six years of having seen them, if at all had the occasion to see. Otherwise, also meeting one Manjinder Singh by this accused is by itself is not sufficient to say that he met him for this conspiracy.

329. As far as the testimony of PW-130, Rajesh Malhotra and PW-133, Dinesh Kumar, is concerned, both these witnesses have alleged that accused Jagtar Singh Hawara used to make International calls from their STD booths and he identified their booths in their possession. However, the evidence relating to identification of booths is not admissible in evidence being not within the preview of Section 27 of the Evidence Act, as per the law already relied upon as it is not discovery of a

fact distinctly related to the crime. In support of this plea, he has relied upon **Anter Singh Versus State of Rajasthan, reported in AIR, 2004 Supreme Court, page 2865, Prabhoo Versus State of U.P reported in AIR 1963 Supreme Court, page 1113, Ms.Arunwan Thamvaro Versus State reported in AIR 2005(4) RCR (Criminal),page 121, State of M.P Versus Dhannalal Moruji reported in 1961 (2) Cri.L.J, page 238.**

330. As far as PW-134, Murli Dharan, is concerned, he has failed to identify any of the accused persons to say that they used to make international calls from his STD PCO at Nagpur during the month of October and November, 1995. As such, his testimony is immaterial. As far PW-135 Mahesh Pal, is concerned, he has allegedly identified accused Balwant Singh and Jagtar Singh Hawara as two persons, who used to come to see Ashok Kumar at Fatehgarh, (U.P) but as discussed earlier the identification of accused on the basis of photographs shown to this witness is meaningless.

331. Similarly PW-121, Anil Bhatia and PW-122, Bhupinder Singh, are the witnesses in whose presence the accused Jagtar Singh Hawara made the disclosure statements, Ex.PW121/1 and Ex.PW121/2. However, the testimony of both these witnesses are not reliable as recovery of alleged Map,

Ex.PW121/3, depicting the Secretariat etc., is not a discovery of a fact as per the spirit of Section 27, as discussed earlier and thus can not be made basis to link the accused Jagtar singh Hawara with the case in hand.

332. At the same time, it is admitted case of PW-121 that Ram Singh @ Kuldip Singh resided in H.No.A-341 Naya Gaon till September, 1995 and if it is so, it can not be believed that there can be recovery of anything from that house after a period of six months on 23.1.1996. On the other hand, it shows that this document has been fabricated by the Police just to implicate the accused Jagtar Singh Hawara. At the same time, it is also proved on the file that the CBI had already raided that house on 12/13.9.1995 and if it is so, there is no question of making any recovery in the year 1996.

333. Similarly the report of two experts namely PW-242, Dr.M.A.Ali and PW-234, S.L.Mukhi, hand writing experts, to establish the hand writing and authorship of the map, Ex.PW121/3, in the hands of Jagtar Singh Hawara, is also not admissible because first of all PW-234 examined these map with the specimen hand writing of Jagtar Singh Hawara and as per his report Ex.PW234/1 held that it can not be linked with each other. If it was so, there was no question of any further report but to falsely implicate the accused, the same documents were

compared again by PW-242, M.A.Ali, who also failed to establish the authorship of the map in a convincing manner and as such evidence of both these witnesses is meaningless. Similarly, no permission of any Magistrate or consent of accused Jagtar Singh Hawara was taken before taking his specimen hand writing etc and if it is so, as discussed earlier, those hand writings can not be made basis to link the hand writing of the accused and thus the accused.

334. He further submitted that it is alleged by the prosecution that accused Jagtar Singh Hawara along with accused Jagtar Singh Tara purchased the car No. DBA-9598 from PW-32, S.K.Dutta on 20.8.1995. However, as discussed earlier the testimony of PW-32 is not reliable for the various reasons and at the same time, he has failed to identify the accused Jagtar Singh Hawara as the other person, who accompanied Jagtar Singh Tara to purchase the Car. At the same time, he has improved his statement by saying that second gentleman was aged about 24 to 28 years whereas in his statement u/s 161 Cr.P.C., he disclosed the age of that person as 21 years. In the court he alleged that both the accused came to him firstly at 2.00 PM and again at 4.30 PM but this fact was also not disclosed by this witness in his statement u/s 161 Cr.P.C.

335. This witness tried to say that the second person, who accompanied Jagtar Singh Tara who represented himself as Basant singh, handed over the bag containing cash to him but this fact was also not disclosed by him in his statement u/s 161 Cr.P.C and this improvement was also made by the witness on the behest of CBI to implicate accused Jagtar Singh Hawara but this endeavor could not succeed as he has failed to identify the accused Jagtar Singh Hawara.

336. Again during the trial PW-32 alleged that after getting the photo copies of the documents of the car, he handed over the original to Basant Singh and retained the photo copies with him, but this fact was also not disclosed by him in his statement u/s 161 Cr.P.C. At the same time, there is no explanation on the file as to why this witness failed to hand over the documents, relating to the sale of car to accused Jagtar Singh Tara, from 1.9.1995 to 20.9.1995, despite the fact that he was repeatedly interrogated by the CBI in that regard.

337. At the same time it is admitted case of the prosecution and this witness that he was not knowing those two persons personally or otherwise and if it was so, a test identification parade should have been conducted but same had not been conducted and as such the identification of only

accused Jagtar Singh Tara by this witness for the first time in the court, that too on the basis of the photographs already shown to him, is meaningless.

338. Above all, he has failed to identify accused Jagtar Singh Hawara as the second person, who accompanied the said Basant Singh. Although he had identified the photo graph of Jagtar Singh Hawara as Ex.PW32/9 but as discussed earlier this identification is no identification in the eyes of law, specially when he had not given any details of the feature of those two persons. Thus the testimony of this witness is not only insufficient but also procured and thus failed to link the accused Jagtar Singh Hawara with the purchase of car. If it is so, there is no evidence on the file even to link the accused Jagtar Singh Hawara.

339. Concluding his case, the learned defence counsel submitted that as per the detailed discussion made above, it is proved on the file that CBI has not at all investigated the case within the law of investigations and evidence Act but have projected a false version on the asking of the Punjab Police then headed by K.P.S.Gill and by suppressing the material evidence, fabricated the true genesis of the occurrence and put forward a concocted story only to falsely implicate the accused persons except accused Balwant Singh, who

has admitted his guilt and there is not even an iota of evidence on the file to show that any of the accused persons facing trial in this case were related with this conspiracy either remotely or directly or aided or abetted the commission of the crime as alleged by the prosecution. Resultantly, he submitted that all of them are entitled for benefit of doubt and be acquitted by passing severe strictures against the CBI for manipulating the facts on the basis of false and tainted investigation.

Points for Determination

340. After due consideration of the rival contentions of both the parties and after going through the voluminous evidence brought on the file by the prosecution, which is further supplemented by the evidence led by the defence and after considering the case law relied upon by both the parties, it comes out that although accused Balwant Singh in his statement u/s 313 Cr.P.C as well as during the trial and arguments admitted in clear words and with loud voice that he and deceased Dilawar Singh had killed the deceased Beant Singh, when accused Dilawar Singh blow him off, being a human bomb, near the car of S.Beant Singh, resulting into his death and the death of 16 other persons. But this theory has been disputed by defence.

341. On the other hand, the learned defence counsels have put forward their own theory totally different from the facts admitted by accused Balwant Singh, denying the factum of killing of Beant Singh by assassin Dilawar Singh, being a human bomb made of RDX and other articles. On the other hand, it is alleged that the true genesis of the occurrence has been suppressed by the C.B.I. in collusion with the Punjab Police and a case of multiple bomb blasts at different places, which took place because of the lapse on part of the security agencies, has been converted into a human bomb case just to falsely implicate the accused persons.

342. Thus in order to decide the controversy from its beginning till the end and to know the true genesis of occurrence leading to the blast and resultant loss of life and property and by whom and in what manner, the following points are determined and required consideration:-

1. Whether on 31.8.1995 at about 5.10 PM assassin Dialwar Singh, being a human bomb exploded himself near the carcade of Beant Singh then chief Minister Punjab near the VIP gate of Haryana Civil Secretariat, being armed with a belt bomb consisting of RDX as the explosive with other articles,

killing the deceased Beant Singh and himself including 16 other innocent persons and causing severe injuries to 15 others.

2. Whether this bomb blast was caused by the deceased Dilawar Singh in execution of a conspiracy hatched by accused Wadhawa Singh and Mehal Singh (proclaimed offenders) with the other accused persons who were absconding and who are facing trial in this case and all of them were the part and parcel of that conspiracy and committed different acts of omissions and commissions in pursuance of their conspiracy leading to the killing of deceased Beant Singh and others.

3. Final Order.

343. After due consideration of the marathon arguments of both the parties and the plethora of oral and documentary evidence, briefed above, and scanning and considering the same as per the proposition of legal principles, relied upon by both the parties in abundance, the decision on the above points, with reasons for its decision, is as follows.

Reasons for decision

Point No 1

344. First of all let us take the first point for determination. As mentioned above, the first and the foremost point for consideration is to know what was the true genesis of occurrence leading to blast at the V.I.P. Gate of Punjab & Haryana Civil Secretariat on 31.8.1995 leading to the death of deceased Beant Singh, then Chief Minister of Punjab and 16 other persons and injuries to 15 other persons.

345. Since it is a question of fact required to be decided on the basis of the evidence led by the prosecution and it was also the duty of the prosecution to prove this fact with cogent and reliable evidence to proceed further.

346. The first point for determination mentioned above involves the following questions:

(1.a) firstly whether the blast took place at the Civil Secretariat on 31.8.1995, which is not a disputed fact, was a single blast caused by a human bomb or it was a case of multiple bomb blasts at different places?

(1.b) secondly, if question no.(a) is proved in affirmative as per the version of the prosecution, whether deceased Dilawar Singh acted as a human bomb and

blew off himself near the carcade of Chief Minister leading to this occurrence?

QUESTION (1.a)

Whether the blast took place at the Civil Secretariat on 31.8.1995, which is not a disputed fact, was a single blast caused by a human bomb or it was a case of multiple bomb blasts at different places?

347. Since this question involves knowing the true genesis of occurrence and based on factual evidence, let us scan the evidence of the prosecution to decide this controversy.

348. As stated earlier, the case of the prosecution is that assassin Dilawar Singh, acting as a **human bomb** blew off himself near the carcade of S.Beant Singh, Chief Minister, Punjab in consequences of a deep rooted conspiracy hatched by the accused persons facing trial in this case along with the other accused named in the charge sheet. As such let us see whether the prosecution has been able bring home this fact or not?

349. Needless to say, it is undisputed case of the defence that deceased Beant Singh, then Chief Minister, Punjab along with 16 other persons died in a blast on 31.8.1995 near the VIP gate of Punjab

& Haryana Civil Secretariat. Undisputedly there is no direct eye witness to the occurrence to depose, how the bomb blast took place and by whom and in what manner. However, PW-218, Harkesh Kumar, one of the NSG Commandos of the Security Staff, has given the first hand version of the blast. But apart from this the entire case of the prosecution is based on circumstantial evidence collected at the spot and its assessment to show the nature of the blast.

350. Needless to say, it is well settled proposition of law that while dealing with a case of grave nature like the present one, there is always a danger that conjecture and suspicion may take the place of legal truth. But to prove conspiracy hatched to commit a heinous crime, circumstantial evidence brought on records must be such which would have no loose ends to tie.

351. To know the true genesis and find the guilt on the basis of the circumstantial evidence, the Hon'ble Apex Court has laid down the guidelines from time to time and the process started with **Hanumant Govind Nargundkar Vs. State of M.P, AIR 1952, Supreme Court, Page 343** wherein the law was laid down in the following terms:-

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the

conclusion of guilt is to be drawn should be in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

352. Yet again in **Sharad Birdhichand Sarda Vs.State of Maharashtra AIR 1984, Supreme Court, 1622**, while dealing with circumstantial evidence, it has been held that the following conditions must be fulfilled before a case based on circumstantial evidence is said to be fully proved including the guilt of the accused persons:-

- 1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established.
- 2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.
- 3) The circumstances should be of a

conclusive nature and tendency.

- 4) They should exclude every possible hypothesis except the one to be proved; and
- 5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

It was further observed that:

"We can fully understand that though the case superficially viewed bears an ugly look so as to prima facie shock the conscience of any Court yet suspicion, however great it may be, can not take the place of legal proof. A moral conviction however strong or genuine can not amount to a legal conviction supportable in law. It must be recalled that the well established rule of criminal justice is that "fouler the crime higher the proof". In the instant case, the life and liberty of a subject was at stake. As the accused was given a capital sentence, a very careful, cautious and meticulous approach was necessary to be made."

"The murder might have been committed in a very cruel and revolting manner but that may itself be a reason for scrutinizing the evidence a bit more closely."

353. Cautioning on this aspect, In **Kashmira**

Singh Vs State of M.P., AIR 1952 SC 159, it was observed that by the Hon'ble apex court:-

"The murder was a particularly cruel and revolting one and for that reason it will be necessary to examine the evidence with more than ordinary care lest the shocking nature of the crime induce an instinctive reaction against a dispassionate judicial scrutiny of the facts and law."

354. Similarly in **Swaran Singh Rattan Singh Vs. State of Punjab, AIR, 1957, SC 637**, it was observed that:-

"Considered as a whole, the prosecution story may be true; but between may be true and must be true' there is inevitably a long distance must be covered by legal, reliable and unimpeachable evidence before an accused can be convicted."

355. Reiterating same thought in **Mousam Singha Roy and Others Vs. State of West Bengal (2003) SLT 202-III (2003) CCR 250 (SC)=(2003) 12 SCC 377**, it was held by the Hon'ble Apex Court that:-

"Before we conclude, we must place on record the fact that we are not unaware of the degree of agony and frustration that maybe caused to the society in general and the families of the victims in particular, by the fact that a heinous crime like this goes unpunished, but then the law does not permit the Courts to punish the accused on the basis of moral

conviction or on suspicion alone. The burden of proof in a criminal trial never shifts, and it is always the burden of the prosecution to prove its case beyond reasonable doubt on the basis of acceptable evidence"

"It is also a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof, since a higher degree of assurance is required to convict the accused."

356. Keeping into consideration the above settled proposition of law it comes out that to assess the nature of the blast, its magnitude and the nature of explosive device used for the blast, the material evidence on the file is the evidence collected by the investigating agencies immediately after the blast including the inspection of the spot by the Ballistics and other experts, coupled with the first hand version of the blast given by the persons present near the site of blast and the reports of the experts after examining the incriminating articles recovered from the scene of the crime showing the nature of the bomb used and its consequences including the medical evidence.

357. In addition to this the case of the prosecution is that immediately after the blast two unidentified legs and a skull was recovered from near the Car of the CM and later on, when scene of crime was examined by the experts it was

found that the blast has been caused by a human bomb and the explosive device used is a belt bomb wrapped around the waist consisting of RDX and other explosives and missiles etc. and two legs and the skull is of the human bomb, who was later on identified to be Dilawar Singh.

358. Let us scan evidence to ascertain the above discussed circumstances in the light of above settled proposition of law. First of all let us take the statement of PW-218, Harkesh Singh, who was one of the NSG Commandos of the NSG Squad, which used to provide mobile security to Shri Beant Singh, then Chief Minister of Punjab. Before discussing his testimony it will be apposite to say that it is undisputed case of the defence that the convoy of the CM always move in the following order:

1. Vehicle No.1 : Pilot vehicle of CRPF
2. Then, Vehicle No.2 : Pilot vehicle of NSGs Commandos
3. Then, three Bullet : Those days these cars
proof Ambassador Cars were firstly
No.3,4 & 5 Ambassador Car
No.PB 08 3469
having
its driver Jagdish
Singh;

Secondly Car bearing
registration No.PB-27-
-6516 having driver
Baljit Singh; and

thirdly Car no. PB 27
6514 having driver
Iqbal Singh.

4. Then, Vehicle No.6 : Escort vehicle of
NSG Commandos.

5.Then ,Vehicle No.7 : Escort Vehicle of
CRPF

6.Then, Vehicle No.8 : Ambulance

359. Giving the above format of the convoy of Chief Minister, PW-218, Harkesh Singh, NSG Commando, deposed that on 31.8.1995, Shri Beant Singh, then CM of Punjab, left his residence for Punjab Secretariat at about 1.25 p.m while traveling in Car No. PB-08-3469 and after arrival of the CM at Secretariat, all the three Cars of CM were parked in the Portico meant for VIP vehicles and the drivers locked the Cars and two security guards one from the CRPF and one of NSG used to guard the vehicles.

360. He further submitted that at about 5.00

PM, they got an information that CM is about to leave the Secretariat and accordingly all of them took positions and parked the vehicles in the above order and at about 5.05 PM, Shri Beant Singh, then, CM came in the Porch and at that time he was facing towards him and NSG guard Kultar Singh was following him and when they were ready to move on the directions of their SP D.K.Tripathy, the Chief Minister was talking to Dr.Duggal and one other person and when he was about to sit in a car, one person, who was without any turban or cap but who was wearing a police uniform, rushed towards the CM and thereafter a blast took place resulting into lot of damage to the vehicles and the building and a fire also started. He further deposed that K.Rama Rao, who was to sit in his Gypsy also fell down because of the impact of the blast and thereafter they rushed towards the Car of CM and dragged out the driver Jagdish Singh, who was injured to a safer distance but they could not save Beant Singh as the car was aflamed and thereafter the fire brigade reached at the spot and the further action was taken.

361. Similarly, PW-78, Dinesh Kumar Tripathy, who was then SP Security to the Chief Minister, also discloses the same facts and disclosed that as soon as the CM reached the VIP gate to board his car bearing registration PB-08-3469, he called Ranjodh Singh Mann to see him at his residence. He

has also given the description of all the persons who were standing near the car of CM. He further deposed that when after saying Ranjodh Singh Mann to come to his Bungalow, the CM was to sit in the car, Dr. Anil Duggal started talking to him and he left to sit in his Car, which was just behind the car of the CM but when he reached near the door of that car, a powerful blast took place and he was injured because of the blast and also become unconscious.

362. Both these witnesses have categorically deposed that there was a single blast resulting into death of Beant Singh along with other persons. At the same time PW-218 has categorically deposed that the blast took place only when that unknown person in Police uniform reached near the CM. The testimony of both these witnesses as to the facts how the blast took place remain unrebutted and goes to show that when the CM was to sit in the Car, one unknown person in Police uniform comes near him and then a blast took place as deposed by both these eye witnesses and this fact alone shows that it was a case of single blast caused by a human bomb.

363. Even otherwise, as discussed above, accused Balwant Singh from the very beginning of the trial as well as during recording of his statement u/s 313 Cr.P.C., categorically disclosed

that on 31.8.1995, he along with deceased Dilawar Singh killed Beant Singh in a bomb blast, which was caused by deceased Dilawar Singh by working as a human bomb and a belt bomb wrapped around the waist of Dilawar Singh was blew off by him after reaching near the Chief Minister.

364. Not even this, in his written explanation furnished by accused Balwant Singh after the conclusion of his statement u/s 313 Cr.P.C, Ex.D(BS)/A, he reiterated the above facts justifying the killing of Beant Singh by him and deceased Dilawar Singh because of the atrocities committed by Beant Singh towards the Sikh community and for claiming himself as messenger of peace and incarnation of Guru Gobind Singh and he again reiterated in his own hands that on 31.8.1995 deceased Bhai Dilawar Singh wrapped a bomb around his waist and collided himself with Beant Singh and killed him, further saying that he was also involved in the killing of Beant Singh for which he has no remorse.

365. Not even this, as mentioned earlier, on 18.03.2006, when recording of the statement of this witness was started and first question was put to him he read out a four pages note, which has been marked A-1 to A-4 and which was later on exhibited as Ex.D(BS)/A. Even prior to that on 24.12.1997 and 24.1.1998 accused Balwant Singh has filed written

application admitting the facts mentioned above.

366. Above all during the recording of statement of the prosecution witnesses, when statement of PW-60, Raju Tamir Haran was recorded and he deposed that accused Balwant Singh was working as Security guard with his maternal grand father, Bhushan Sirhandi and he used to have a Scooter, Ex.P77 and during that time he along with his friend deceased Dilawar Singh used to come to his house.

367. He also deposed that on one occasion about 2-3 months prior to the assassination of Beant Singh, he attended a call which was for Balwant Singh and the person calling identified himself as uncle of Balwant Singh and was speaking from Delhi and had asked him to convey to Balwant Singh that he i.e Balwant Singh should meet him at Gurudwara Seesh Ganj ,New Delhi and on the next morning he conveyed this message to Balwant Singh and he also identified the hand writing of accused Balwant Singh on the slip, Ex.PW60/A, on which the accused Balwant Singh has written a couplet for deceased Dilawar Singh, when he was going to blow himself.

368. After the recording of the examination in chief of this witness, when opportunity to cross examine was given to accused Balwant Singh, he gave

a writing, Ex.CD/1 and stated that he do not want to cross examine this witness as he has stated the truth and further admitted that he has killed the deceased Beant Singh with the help of deceased Dilawar Singh by way of human bomb. Not even this when PW-95, Tejinder Singh deposed about making of extra judicial confession by accused Balwant Singh giving all the details of conspiracy and role of each and every accused person from its beginning till its execution and when opportunity to cross examination him was given to accused, he suggested to him that whatever has been stated by him against them is correct except qua accused Gurmit Singh.

369. Last but not least, even during the course of arguments, accused Balwant Singh submitted again a writing which was made part of record on 20.4.2007 taking same stand.

370. It has been alleged by learned defence counsels that the admissions made by accused Balwant Singh in his statement u/s 313 Cr.P.C can not be made sole basis, either to assess the nature of blast or to convict the accused Balwant Singh or any other accused, as per the law laid down by Hon'ble Apex Court in **Mohan Singh Vs. Prem Singh, AIR 2002, Supreme Court, page 3582** and by a division bench of Madhya Pradesh High Court in **Mohan Versus State of M.P. 2005 (1) RCR page 3.**

371. However, after going through the case law relied upon by defence, it comes out that it was never held by the Hon'ble Supreme Court or the High Court that a conviction can not be based on the confession made by the accused during his statement u/s 313 Cr.P.C but it was held that the conviction can not be based on the basis of the part admission made in the statement recorded, u/s 313 Cr.P.C, if the accused does not confess and only explain the circumstances appearing against him in the evidence and sets up his own version and seeks to explain his conduct pleading that he has committed no offence.

372. Thus it was held that where the statement made by accused is partly inculpatory, the court has to accept it or reject it in whole but it can not convict the accused relying on the inculpatory part and ignoring exculpatory part. However, it was clearly held that that if the accused in his examination u/s 313 of the Cr.P.C, confesses to the commission of the crime charged against him, the court can rely upon the confession and proceed to convict him and the crux of the matter was that an admission made by an accused u/s 313 Cr.P.C of a fact without admitting the guilt can not be used against him to base a conviction.

373. However, in the present case, as discussed earlier, the accused Balwant Singh in clear terms

and repeatedly, during the different stages of the trial, reiterated that he and deceased Dilawar Singh have killed Beant Singh by a **belt bomb**, which was wrapped by deceased Dilawar Singh, on his waist and blew off himself near Beant Singh. Thus it is a case where the accused Balwant Singh has admitted the nature of blast and the nature of the explosive device used and the person who acted as human bomb and then it is further corroborated by the other evidence. Thus no further discussion is required to burden this judgment to reach to this conclusion. Thus the stand taken by both the witnesses i.e PW-218 and PW-78, coupled with the admissions made by accused Balwant Singh and the evidence brought on the file, clearly spells out that it was neither a case of multiple bomb blasts nor a case of blast by a remote control device as alleged by the defence but a case of single blast that too caused by a Suicide Bomber.

374. At the same time, it is also proved that immediately after the blast, when the information was sent to the Police, PW-240, Nanha Ram, then SHO of PS North, reached at the spot and cordoned the area of the blast and on inspection of the spot, he found about 10 dead bodies lying at the spot and on further inspection he also found two severed legs, one near the Car of the CM and the other at the distance of 6 to 7 feet towards VIP gate and a skull near the Car without torso. He also prepared

a rough site plan of place of occurrence Ex.240/2 showing the existing state of affairs at the scene of crime.

375. He also deposed that Police photographer as well as Dr.Mishra of FSL Punjab also came on the spot and as per his request, both of them took the photographs of the scene of crime from different angles. The prosecution has relied about 70 photographs Ex.PW119/1 to Ex.PW119/70 and PW-240 has categorically stated that the scene of crime as shown in the photographs is the same as he had seen on the day of blast. He has categorically stated that these photographs includes the photographs taken by the Police photographs as well as by the experts of FSL, Punjab and experts called by the CBI.

376. Not even this, it is also proved on the file that on 1.9.1995 the investigation of this case was entrusted to CBI and PW-247, R.S.Punia, then DSP, CBI, was appointed out as Chief Investigating Officer. As per the directions of PW-247, PW-248, S.N.Saxena was deputed to reach the spot and start investigations and he has also deposed that after reaching at the spot, Nanha Ram handed over the above photographs to him and when he inspected the spot he found the scene of crime in the same manner as shown in these photographs.

377. Not even this, the CBI has also deputed the experts to examine the scene of crime and one of these experts was PW-165, Roop Singh, a ballistics expert and he has also deposed that he examined and inspected the scene of occurrence from 1.9.1995 to 3.9.1995 and under his direction and supervision, the CBI official has taken into possession certain material articles from the spot and the same were examined by him in the Laboratory in various divisions with the help of other experts.

378. Even the major parts of the damaged car of the Chief Minister were also taken to the Laboratory along with all the incriminating articles lifted from the spot, recovered from the accused persons and otherwise, the details of which are mentioned in the reports, Ex.PW165/1 to Ex.Pw165/7, consisting of bullet proof Ambassador car no. PB-08-3469 and the debris collected from the scene of crime including the blood stained and shattered clothes, metallic pieces, glass pieces, dust, damaged paper pieces, flesh and bone pieces, wall plaster pieces, aluminum metal, paper and card board pieces, burnt plastic pieces, the sweepings collected from the floor of the car of the CM, damaged and shattered identity cards, blood stained turbans, rexine and foam pieces, damaged number plate of the car of CM etc.

379. It is further proved on the file that all the experts after examining the scene of crime and all the above mentioned incriminating articles in different laboratories of CFSL i.e in the biological, physical and ballistics division, as per different reports, specially the reports of PW-165 i.e Ex.PW165/1 to Ex.PW165/7 and PW-248/2 of Ms. Balinder Kaur, an expert of CFSL, Chandigarh, concluded that a powerful improvised explosive device (IED) had exploded at the rear left side just near the dickey portion of the car of the CM, in which he was going to sit, at a height of above 3 feet above the ground level and high explosive of about 2 kg of quantity along with other missiles in the form of spherical iron walls, iron nuts, bolts, thick iron rebuts etc were used on the blast and on the basis of examination of two shattered legs and skull it was also concluded that the explosive device was wrapped on the torso of the person, who could have acted as a suicide bomber.

380. One of the objections as to the authenticity of the report of PW-165, raised by the defence was that this witness has no where stated that he has examined two legs and a skull, when he examined the scene of crime.

381. However, after considering the factual aspect with the legal principles, it comes out that

there is no force in this plea because during the cross examination, this witness has deposed that he was taken to the mortuary by the CBI officials and perhaps it was in General Hospital Sector 16, Chandigarh and he was categorical as to the examination of two legs and the skull and its inspection by him. As such there is nothing on the file to disbelieve the stand taken by this witness as to his expert opinion as to the nature of the blast and its magnitude.

382. At the same time, this witness has further justified his opinion by saying that if explosive device is exploded while being kept or planted inside or beneath the car, the entire car get shattered into pieces and there will be a definite mark regarding the seat of explosion, known as crater but he has not found any such symptoms, when he examined the scene of crime as well as the car of CM and as such there is no possibility of any blast from inside the car or planted beneath it. He further deposed that after examining debris he found traces of RDX which shows that RDX was used as explosive to blast.

383. Not even this, another expert Ms.Balinder Kaur of CFSL Chandigarh was also called at the spot and she has also examined the scene of crime and the incriminating articles taken into possession by PW-240, on 1.9.1995 along with the cotton swabs,

taken from the car of the CM by Balinder Kaur personally and which were taken to the Laboratory on the same day and as per the report, Ex.PW248/2, which is admissible in evidence under the provisions of Section 293 of the Cr.P.C, Mrs.Balinder Kaur after examining all these articles for the chemical analysis, concluded that the traces of RDX and PETN, which are high explosives, were detected in the articles recovered from the spot.

384. As far as the grounds pointed out by learned defence counsel to challenge the investigation and the conduct of the investigating agency is concerned, no doubt there are some gaps, lacunas and infirmities in the investigations carried out by the Investigating Agency, however, keeping in view the nature of crime and the circumstances in which the investigations were taken over by the CBI, no material dent can be inferred as far as the material question as to assess the nature of blast and its consequences are concerned.

385. The main vehicle i.e the car of the CM, in which he was going to sit, when this blast took place and which was the target of the assassin, was duly examined by the expert witnesses including PW-165, Roop Singh a Ballistics Expert, who has based his opinion as to the nature of the blast and the

device used, after examining the damaged car and its parts and other incriminating articles found near the same. Similarly, PW-165 has given a definite report as to the magnitude of the blast, its nature, the device used and the explosives involved with complete details of the articles examined, its identity and nature and the tests applied. To further clarify it, it comes out that the main report of PW-165, in this regard is Ex.PW-165/1 and a perusal of this report shows that all the incriminating articles recovered from the spot from 1.9.1995 to 3.9.1995 by PW-240, Inspector Nanha Ram of Chandigarh Police and the other Investigating Officers of the CBI, were sent to him and all those articles were in 27 parcels duly sealed with the seal of 'AK' and all these parcels contained the debris collected from the spot as well as the damaged number plate of the car of the CM, its tail light and after examination of all these articles in the various laboratories coupled with the detailed examination of the scene of explosion by PW-165 along with other experts from 1.9.1995 to 3.9.1995 including the examination of the badly damaged car no.PB-08-3469 which was the target of the blast as well as two legs and a skull, a final report was prepared to assess the nature of blast and it was concluded that this blast is a single blast, caused by a powerful improvised explosive device by a human bomb. Not even this, he has also identified all those

incriminating articles in the court as part of articles Ex.P-1 to Ex.P-218 except those articles which have not been examined by him.

386. The same was also confirmed by the other expert witnesses including Mrs Balinder Kaur of CFSL, Chandigarh, who has also examined the scene of the crime and took into possession certain incriminating articles as mentioned in her report, Ex.PW248/1 and corroborated the opinion of PW-165. Then there are photographers of Chandigarh Police, CFSL, Chandigarh and the CBI, who took the photographs of the scene of crime and those were supported by the ocular version of the experts and the Investigating Officers, who have also assessed the scene of crime.

387. PW-241 to PW-248, who have investigated the case at one stage or the other, after taking over of the investigation by the CBI, categorically deposed as to what was done on what day and they have also deposed as to the proceedings conducted by them on 1.9.1995. At the same time, PW-178, Dr.S.K.Chadha, an expert of CFSL, Delhi has also proved that on the directions of the CBI, he inspected the suspected car No. DBA-9598 in the Police Station and also examined the scene of crime. Even PW-165 has prepared an inspection memo after inspecting the scene of crime and he had deposed that he took that report with him to

prepare his final report and under these circumstances, the same was not made part of the record.

388. As far as the plea of learned defence counsel regarding non-production of first inspection memo allegedly prepared by PW-248, is concerned, PW-248, has categorically explained that he has prepared a separate inspection memo while inspecting the spot but the same was made part of the case diary and he further stated that he had got prepared a scaled site plan of the scene of crime, Ex.PW248/3, which was got prepared from Architects, which clearly indicates the position of the dead bodies lying on the spot as well as the position of Carcade of the CM at the time of its explosion, depicting the entire nature of the scene of crime. Not even this, during the cross examination of PW-248, the case diary was produced in the court and it was observed that the observation memo dated 1.9.1995 was part of the case diary and nothing was recovered or seized vide this memo and as such it was rightly not made part of the record.

389. All the articles, taken from the spot by various Investigating Officers as per the directions of the experts have been sealed and sent to CFSL and the details of all these articles are duly mentioned in the reports of the experts

including Ex.PW-165/1 to Ex.PW-165/7 and Ex.PW-248/2. Even in the report Ex.PW165/7, it is mentioned that the wind screen was also examined while preparing this report.

390. Non-production of the Video cassette allegedly prepared at the spot showing the scene of crime, itself is not sufficient to say that it was so done with an intention to suppress any fact specially when there is no evidence on the file to say that any Videography of the scene of the crime was also conducted and if so by whom and on whose direction.

391. PW-240 has nowhere admitted the making of the video film of the scene of the crime as alleged by learned defence counsel. On the contrary, he has alleged that he has got only the scene of occurrence photographed by the Police Photographer and there is no other evidence on the file to show this fact. The plea of learned defence counsels that in the report of Manik Sabharwal, mark CQ/1, there is mention of study of the video film, can not be made basis to say that any video film was prepared by the Investigating agencies because this report has not proved on the file. Even if it was so, it has been categorically explained by PW-248 that there was no source of making of video film and its authenticity, as such, same was not made part of record.

392. Above all, if the defence was so concerned with the need of Video film it can easily summon the same in the defence evidence or this fact can be corroborated by summoning Mr. Manik Sabharwal in the defence as this witness has not been examined by the prosecution and his report is also not relied upon but it has not been so done which shows that as far as the factual position of the scene of crime and its nature is concerned, it is not disputed as the only purpose of the video film was to depict the same which is otherwise proved on the file in view of the photographs and the ocular version of the prosecution witnesses as discussed earlier, including the recovery of two legs and a head of unidentified person.

393. Report of Manik Sabharwal an expert of the Army, mark-CQ/1, is part of the record. No doubt, the prosecution has not examined this witness to prove his report and opinion as to the nature of the blast. However, the same was brought on record by the defence by putting the same to the Chief Investigating Officer. As such, no adverse inference can be drawn as the prosecution has not relied upon the same, specially when it can be considered and taken into consideration once it was brought on record by the defence itself. As stated earlier, the defence was also at liberty to summon and examine this witness in defence so as to refute

the authenticity of the nature of the blast and the scene of crime as proved on the file by the prosecution.

394. PW-240 has categorically explained that the photographs, Ex.PW119/1 to Ex.PW119/94 includes the photographs prepared and taken by the Police photographers, expert of FSL, Punjab and by the experts of the CBI and it also includes the photographs of the two legs and a skull. Even otherwise PW-119, Dr.Gopal Ji Mishra, has also brought the negatives of the photographs and produced the same in the court. But those were returned to him with the permission of the court and he had categorically deposed that he reached at the place of occurrence at about 5.45 p.m. i.e immediately after the blast and took about 70 photographs. He further deposed that on 2.9.1995 he went to the mortuary and took the photographs of the two legs and skull which are Ex.PW119/71 to Ex.PW119/94. No doubt, some of the photographs produced in evidence by him were not taken by him, but it makes no difference as to its admissibility. Not even his, this witness has also explained that when he took the photographs of the seat of blast near the car of CM, he found that the right leg was found near the rear left wheel of the blasted car and the second leg was found at the entrance gate of Secretariat. He also explained that the shoe was in right leg. Thus the testimony of this witness further proves the authenticity of

photographs as well as scene of crime as shown in these photographs. Not even this, the photographs of the scene of occurrence are further proved by the statement of the Police Officers, who visited the scene of occurrence including PW-242 to PW-248, who are the main Investigating Officers. As such, this plea has no basis to assail the investigations conducted by the Chandigarh Police or the CBI.

395. Non-production of the vehicles involved in the blast is no ground to draw any adverse inference qua the investigations specially when factum of blast is not disputed. Since, no specific part of the belt bomb used by the assassin was traceable or available at the spot, its recovery is thus not possible.

396. The recovery of weapons of the various security agencies has no relevancy as it was never the case of prosecution or the defence that any firing took place at the scene of crime. As such the fact how many weapons were damaged and how many were not traceable after the blast is not relevant as far as the present trial is concerned. Not even this, a perusal of the court record shows that during the pendency of commitment proceedings before the CJM, Chandigarh, the Commandant first Battalion, HAP, Ambala City moved an application for the release of the arms and ammunition of their Battalion, which were taken into possession by the

Chandigarh Police at the time of inspection of spot and on that application the learned CJM, Chandigarh vide his order dated 23.2.1996 released the same to the applicant and this fact further document shows that all the arms and ammunition found at the spot were taken into possession and were later on released having no link with this case.

397. No doubt, the investigating officers were required to prepare the site plans of the various places of recoveries of incriminating articles in consequences to the disclosure statements of the accused persons or otherwise and those have not been made but it does not make the recovery proceedings doubtful ipso facto. At the same as far as the recovery of incriminating articles from the scene off crime is concerned, PW-240, Nanha Ram, SHO and the first investigating officer, has categorically stated that he prepared a site plan of scene of crime, Ex,PW240/2, showing all the existing state of affairs at the spot immediately after his reaching at the spot even before starting recovery proceeding of incriminating articles.

398. No adverse inference for not recording the statements of the two drivers of the two other cars of the CM or other material witnesses, for the purpose of registration of FIR or investigations, can be drawn because none of them were the eye witnesses in true sense to say that they have seen

the deceased Dilawar Singh while detonating the bomb. At the same time, the FIR is to be registered just to initiate the investigation and it is not the be all and end all of the case, specially in a case of present nature.

399. Not even this, it is also come in evidence that the injured witnesses, who were near to the Car of the CM including drivers of the other car, Baldev Singh Mann, MLA and Dhanwant Singh etc were disoriented because of the injuries and the medicines given to them and were not in position to disclose anything.

400. As such the authority relied upon by the learned defence counsels titled **Ganesh Bhawan Patel Vs. State of Maharashtra, AIR 1979, Supreme Court, page 135** is of no help to the defence because in that case there were the eye witnesses of the murder, whose statement were not recorded immediately and on those facts their testimony were found to be doubtful. However, at the same time, the Hon'ble Apex Court has reiterated the well settled principle of law that a delay of few hours, simplicitor, in recording the statement of the eye witnesses, may not, by itself, amount to a serious infirmity in the prosecution case. But it may assumes such a character if there are concomitant circumstances to suggest that the investigator was deliberately marking time with a view to decide

about the shape to be given to the case and the eye witnesses to be introduced.

401. However, in the present case, it is undisputed case of the prosecution that there was no eye witness of the occurrence in true sense and as such delay in examination of those persons is immaterial. At the same time, immediately after the blast, the first duty of the Police and the persons reached at the spot was to save the life of injured persons and not to confront them as to how the occurrence took place.

402. As far as the plea of learned defence counsel regarding the alleged delay in the registration of FIR is concerned, again in this case, as stated earlier the first preference of the Police and the Officers reached at the spot including the injured persons but who were in their senses, was to save as many lives as possible by providing immediate medical help to the injured. At the same time, the occurrence in question took place at 5.15 p.m and the FIR was recorded at 7.30 PM on the statement of Constable Pala Ram. At the same time, the nature of the offence itself shows that the registration of the FIR was required only to initiate the investigations as it was not a case based on the eye witness account but was a case of sudden bomb blast caused without giving any warning and time witness that.

403. Similarly, the plea of learned defence counsels regarding the delay of registration of FIR is also inconsequential because of the fact that after transfer of the investigations to the CBI, it has only re-registered the case to formally set its machinery in motion for the investigations and it was not barred from investigating the case till the re-registration of the FIR as it was not a condition precedent to start the investigations. Above all, no prejudice whatsoever has been caused to the accused persons because of this, as none of the accused persons have been named in the FIR. As such, this plea of learned defence counsels proved to be a plea for the sake of arguments only.

404. For the same reasons, no benefit can be given to the defence for the faults committed by the Investigating Officers for not recording the statement of those witnesses and the authority relied upon by learned defence title **Subhash Vs. U.T, 1976 Criminal Law Journal, page 1521, and Sevy and others Vs. State of Tamilnadu, 1981, Criminal Law Journal, page 736** are of no help to the defence.

405. On the other hand, the Hon'ble Apex Court in **Laxmi and others Vs. State of U.P., 2002 (4), RCR (Criminal), Page 82**, reiterated the well settled principle of law that every faulty

investigations or padding in evidence can not by itself lead to total demolition of the prosecution case, if it can otherwise stand, ignoring these fallacies. Similarly in **Mundrika Mahato Vs. State of Bihar, 2002 (2) RCR, Criminal, page 627**, again the Hon'ble Apex Court reiterated this fact and held that it also cannot be ignored that in large number of criminal cases, the investigations are neither perfect nor scientific but no benefit of this fact can be given to the defence, if the facts are otherwise proved and it by itself cannot lead to a conclusion that the accused are innocent. But the only requirement is of extra caution by courts while evaluating the evidence keeping in view the facts and circumstances of the case and the nature of the offence involved. Similar principle was reiterated by the Hon'ble Apex Court in the latest authority titled **Acharaparambath Pradipan Vs. State of Kerala, 2007 (1) RCR, page 929**. Accordingly in the present case as mentioned above the facts and circumstances in which this blast took place and involving number of deaths and number of injured persons and the fact that the investigations were initially initiated by Chandigarh Police and then taken over by the CBI, there is every possibility that there must have been some infirmities and deficiencies on the part of the Investigating Officers may be due to over sight or otherwise but these have no effect on the over all conclusion of the Investigating Agencies.

406. Similarly, no doubt there are some discrepancies in the testimony of the Police witnesses and the private witnesses relating to the factual position but it is not sufficient to disprove the case of the prosecution specially when the entire case is based on circumstantial evidence on all aspects of the case including the nature of the blast, factum of conspiracy and the link of the accused persons with the same. In this regard, the Hon'ble Apex Court in **Inder Singh Vs. State, AIR 1978, Supreme Court, page 1091**, while interpreting the aspect of proof of guilt beyond reasonable doubts and the standard of proof required held that "Credibility of testimony oral and circumstantial depends considerably or on a judicial evaluation of totality, not isolated scrutiny while it is necessary that proof beyond reasonable doubt should be adduced in all criminal cases, it is not necessary that it should be perfect proof beyond reasonable doubt is a guideline, not a fetish and guilty man can not get away with it because the truth suffers some infirmity when projected through human process. The judicial quest for perfect proof often accounts for police presentation of fool proof concoction. We must be realistic."

407. At the same time, the objection raised by learned defence counsel as to link evidence to prove the intactness of the incriminating articles

recovered from the spot till it reaches to various laboratories, is of no consequences, keeping in view the nature of those articles and the fact that all these articles were taken into possession in the presence of the experts and as per their directions and as such there is no question of any interference with their contents. At the same time, all the incriminating articles recovered from the spot were necessary only for the purpose of assessing the nature of the blast and the explosive device used and it has no direct link with the accused persons and at the same time the factum of blast is duly proved and not disputed. As far as the plea of learned defence counsel regarding recovery two diaries, one from near the dead body of Yash Pal and other from near the dead body of Swarn Singh, is concerned, since nothing incriminatory was found in these diaries, those were not relevant and were not made part of the record.

408. In addition to this, all the Investigating Officers of the case have categorically deposed that all the incriminating articles recovered from the spot or from the possession of the accused persons were sealed and kept in the same condition till it reaches the expert. Not even this, almost all the articles recovered from the spot, were in the presence of experts and as per their directions and as such there is nothing to doubt about

intactness of those articles specially when the nature of those articles itself is sufficient to say that there can not be any possibility of any interference with the same. At the same time during evidence all these incriminating articles have been produced in the court and identified by the material witnesses, concerned with the same and exhibited in the court as material articles Ex.P-158 to Ex.P-219, which further shows that this plea is without any substance and have any effect on the case of prosecution. Even the photographs of all the accused persons identified by the various witnesses during investigation has been produced on record as mentioned in para 55 of the judgement.

409. Even PW-248 has deposed that all the articles, which were recovered from the spot on 2.9.1995 and 3.9.1995 as well as the RDX recovered from the house of accused Nasib Singh was taken by him from the CBI malkhana Chandigarh and was carried to Delhi and was deposited with the CFSL authorities. As far as the question of recovery of incriminating articles from the accused persons including the recovery of the RDX from the possession of accused Nasib Singh and its link with the case is concerned that will be considered when the case of accused persons will be discussed individually.

409.1. To further clarify this point, it comes out that, as is clear from the

testimony of PW-240, Inspector Nanha Ram, first of all, he took into possession certain incriminating articles from the spot as mentioned in Ex.PW-179/6, in the presence of Balinder Kaur, an expert of CFSL, Chandigarh and all those articles were sealed in 27 parcels as per the details mentioned in the recovery memo in the presence of PW-179, SI Ved Parkash and sealed with the seal of 'NR' and were sent to CFSL, Chandigarh on 1.9.1995 itself through SI Ved Parkash and after examining those articles along with the specimen seal impression, Ms.Balinder Kaur conducted the test and prepared her report Ex.PW-248/2 dated 12.9.1995 vide which she detected RDX and PETN, which are highly explosive substances, thus this report shows that all the incriminating articles recovered from the spot on 1.9.1995 reached the CFSL on the same day and therefore there is no question of missing of any link evidence in this regard.

409.2. Then, it further comes out that when the investigations were taken over by the CBI and the scene of crime was examined by Sh.SN Saxena, DSP, CBI with the help of PW-228, P.K.Dhawan, Inspector

Crime Branch, Chandigarh and PW-191, Neeraj Sharma, in the presence of the experts of CFSL Delhi, who also examined and inspected all the vehicles damaged in the blast as per the details mentioned in the observation-cum-seizure memo, Ex.PW-228/1 and during the inspection of the scene of crime, some more incriminating articles including blood samples collected from the spot from where the dead bodies were retrieved; sweepings from the floor of the front side and the right rear side of the car and its dickey of car, which was target of blast; clothes and articles of the deceased persons lying at the spot; and other articles as detailed in memo Ex.PW228/1 and, all those samples were sealed in 23 parcels, sealed with the seal of 'AK' and after preparation of a sample seal, all those parcels were kept by the I.O. and then on the next day, again some more incriminating articles were collected from the scene of crime by A.K.Ohri in the presence of PW-228, PK Dhawan and PW-191, SI Neeraj Sharma, as per the seizure memo Ex.PW-191/A and Ex.PW-191/B and five more parcels of all these articles were prepared and sealed and thereafter all these parcels were handed over to Satish

Kumar, Assistant Malkhana, CBI, Chandigarh on 3.9.1995, as is clear from the receipt given by said Satish Kumar on these recovery memos.

409.3. In addition to this, it is also proved that PW-248 after completing the proceedings at Chandigarh on 20.9.1995 left for Delhi along with all the above articles which were temporarily kept in the malkhana of the CBI, Chandigarh as admitted by DW9, Prahlad Singh, and then deposited these articles in the CFSL, Delhi on 21.9.1995. As such, there is due explanation on the file that all these articles reached CFSL in intact condition and there is nothing on the file to doubt the veracity of the prosecution in this regard. At the same time, in **Smt.Meena Gopalkrishna Vs. State of Maharashtra 1993 Cr1.L.J. 3634**, the Hon'ble Bombay High Court held that where it is proved that the incriminating articles were sealed at the spot and reached the Chemical Examiner in the same state and the Chemical Examiner also found the seals to be intact and similar to the samples seal impression, there is no question of disputing the intactness of the case property even if the police

officials with whom it remained and who took the same to the Chemical Analyst has not been examined, as there is no possibility of tampering with the same in transit. At the same time, PW-248 has categorically stated that he himself took all the case properties to the Laboratories and till the time, it remained in his possession, neither he interfered with its contents nor he had allowed anybody to do so.

410. Even PW-247, R.S.Punia, one of the Investigators of the case has deposed that on 3.9.1995, when he inspected the scene of occurrence, he also did not notice any crater beneath the body of the car, which further shows that there is nothing on the file to disbelieve the stand taken by accused Balwant Singh that it was a single bomb blast caused by Dilawar Singh as a suicide bomber.

411. Above all, this court can also assess the nature of blast from the scene of crime as shown in the photographs and site plan prepared by PW-240, Nanha Ram, Ex.PW240/2. And a perusal of the above mentioned records and the reports of experts and the facts and circumstances under which this blast took place coupled with after effects, it comes out that it was a single blast caused by an improvised

explosive device, being strapped on the waist of a human being, who detonates the same in close proximity to the target, i.e the car of the Chief Minister because no crater was found on the ground, which indicates that the device has been initiated above the ground level.

412. In addition to above discussed evidence, it is also proved on the file that Jagdish Singh, driver of the Car No. PB-08-3469, which was the target of the assassin; Kultar Singh NSG Guard; ASI Jagdish Singh another PSO; Swaran Singh PA and Yash Pal Bali other PA, to the chief Minister and Dr.Anil Duggal, who all were present near the car of Chief Minister, died immediately after the bomb blast, either at the spot or in the Hospital.

413. Apart from this, the other dead persons were also in the vicinity of the place of blast. This fact itself shows that there was only one blast, as all those, who died were those, who were either near the deceased CM or nearby his car as per the details mentioned in the site plan, Ex.PW-240/2, showing the scene of crime as it exists at the spot, immediately after the blast. Not even this, it is further proved that only car of CM, which was target of blast, was damaged extensively, as is clear from the photographs, Ex.PW-119/1 to Ex.PW-119/71. And lastly even the major damage to the building was also near that place only. This

aspects further fortified the above conclusions that it was case of single blast caused by a human bomb.

414. This fact is further fortified from the fact that the maximum damage has been occurred to the left rear side of the car of the CM and the CM was going to sit in the car, from that side, and all the persons died immediately after the blast were those, who were present near that car, which further shows that the seat of the explosion is above the ground level near the left rear side of the car and this blast is possible only when caused by a suicide bomber, through an IED wrapped around the torso of the body, specially when it is further proved that only torso of the body of human bomb was missing and two legs and skull were intact and were recovered from the spot.

415. At the same time, the damage caused to the building and the surroundings further shows that the blast took place out side the car and not inside the car. The two bomb theory and the use of incendiary bombs as propagated by the learned defence counsels, is not supported by any evidence, circumstantial or otherwise, specially when it is clear that any sort of bomb explosion will result into fire and damage which is main effect of a incendiary blast. Similarly, the plea of learned defence counsel that one of the bomb blast took

place inside the car, is also baseless as it can not be believed that, had there been a crater at the place of blast, it would have not been noticed by so many Investigating Officers, who inspected the spot and the expert witnesses, including PW-165, who has categorically stated that he had not found any crater at the spot or under the car and he had also justified his opinion in this regard with scientific reason, which appeals to the mind of this court also.

416. As far as the reliance of learned defence counsel on a news item published in this regard in The Tribune dated 8.9.1995, copy of which is Ex.DW1/4, is concerned, this is inadmissible in evidence as per the law laid down by the Hon'ble Apex Court in **Samant N.Balakrishna etc., Vs. George Fernandez and others etc. reported in AIR 1969 Supreme Court, page 1201**, and as reiterated by the Hon'ble Apex Court in **Laxmi Shetty Vs. State of Tamilnadu, AIR, 1998, Supreme Court, page 1274**, where the Hon'ble Apex Court held that

"Judicial notice can not be taken of the facts stated in a news item being in the nature of hearsay secondary evidence, unless proved by evidence aliunde. A report in a newspaper is only hearsay evidence. A newspaper is not one of the documents referred to in Section 78(2) of the Evidence Act by which an allegation of fact can be proved. The presumption of genuineness attached under Section 81 of

th8e Evidence Act to a newspaper report can not be treated as proved of the facts reported therein. A statement of fact contained in a newspaper is merely hearsay and therefore inadmissible in evidence in the absence of the maker of the statement appearing in court and deposing to have perceived the fact reported."

417. Accordingly, in the present case neither DW-1 nor DW-3, Prabhjot Paul Singh, who was the Principal Correspondent of 'The Tribune' those days proved the contents of the news item Ex.DW1/4. As such, anything published in the news paper regarding the bomb blast can not consider for any purpose whatsoever either for or against the defence.

418. Thus in view of the above discussed legal and factual evidence, the irresistible conclusion is that it was a case of single bomb blast caused by a improvised high explosives device, initiated by an assassin, who bore the bomb in a belt around his waist and initiated the same with the power source of dry cells/battery, with the help of an on-off switch, in the close proximity to the car of the CM and thus it was a case of human bomb blast and there is no scope of doubt in the mind of this court to come to this conclusion.

QUESTION (1.b)

If question no.(a) is proved in affirmative as per the version of the prosecution, whether deceased Dilawar Singh acted as a human bomb and blew off himself near the carcade of Chief Minister leading to this occurrence?

419. Undisputedly, as per finding question(1.a) it is proved on the file that on 31.8.1995, the deceased Beant Singh and 15 other persons died in a blast in the Civil Secretariat of Punjab caused by a suicide bomber, whose two legs and a skull was found at the site of blast. Now the question comes whether deceased accused Dilawar Singh acted as a human bomb and caused this blast and those two legs and skull were of him.

420. In this regard, it is further proved on the file that after the bomb blast, PW-240, reached at the spot and found that there is no eye witness to give the circumstances leading to the blast and when he went to the P.G.I, he recorded the statement of PW-30, C.Pala Ram, Ex.PW30/3 and PW Pala Ram has also given the same account of blast as was given by PW-218 and thereafter a formal FIR was registered.

421. The case of prosecution is that two severed legs and the skull recovered from the spot were taken to General Hospital, Sector 16 Chandigarh, after conducting the proceedings u/s 174 of the Cr.P.C. Although a lot has been argued

by learned defence counsels, disputing the recovery of two legs and skull from the spot on 31.8.1995 itself and its identity alleging that there is no evidence on the file that these limbs were recovered on 31.8.1995 from the spot and later on deposited in the P.G.I for postmortem examination.

422. However, this plea is without any basis because there is sufficient evidence on the file, which proves that immediately after the blast, these two legs and the skull were recovered from the spot by PW-240, Nanha Ram but admittedly he failed to take proper measures to keep the same in proper custody.

423. First of all, as stated earlier, PW-240 deposed that when the information was sent to the Police, he reached at the spot and cordoned the area of the blast and on inspection of the spot, he found about 10 dead bodies lying at the spot and on further inspection he also found two severed legs, one near the Car of the CM and the other at the distance of 6 to 7 feet towards VIP gate and a skull near the Car without torso.

424. In addition to this, as stated earlier, PW-119, Dr.Gopal Ji Mishra, Director Forensic Science Laboratory Punjab, who have visited the scene of crime immediately after the blast, also proved that when he took the photographs, the two

legs and skull, were lying near the blasted Car of the CM and he has also given the description of the spots where the same were lying. As such, this fact also proves the presence and recovery of two legs and the skull immediately after the blast. Even PW-165 has deposed that he had also seen and examined two legs and the skull recovered from the spot and in the report, Ex.PW-165/1, he has referred that on the basis of the scientific examination of the two legs and the skull and the complete destruction of the corresponding torso, coupled with other facts and circumstances, suggests that the exploded IED was on the body of the person, who had tied the explosive belt around his waist. As far as the plea of the learned defence counsel that PW-165 has not prepared any separate inspection memo of these limbs is concerned, it has no force because PW-165 has clarified that he had inspected and examined these limbs in the mortuary of General Hospital, Sector 16, Chandigarh in the presence of all other experts and officials of the CBI and he had also prepared a sketch of the limbs after measurement and also made a report in this regard and then prepared a final report of the entire inspection Ex.PW-165/A.

425. Above all, Ex.PW6/42, is the inquest proceedings of these limbs prepared by PW-240, on 31.8.1995 itself at the spot, and in this report also, he has categorically mentioned that these

limbs were recovered from near the blasted car of CM as shown in the site plan prepared in the proceedings. Although, the learned defence counsel alleged that PW-176, SI Gamdoor Singh was also present during the inquest proceedings but has not stated about the two legs and the skull. But there is no force in this plea as this witness has categorically stated that he was not present when the inquest proceedings were prepared by PW-240 but he was assigned the duty of a postmortem examination of the dead bodies and two legs and the skull.

426. At the same time, the moot question is whether any of the remaining dead bodies recovered from the spot were having any of the limbs, similar to the limbs recovered from the spot, missing. However after scanning the entire medical evidence of prosecution including the statements of Doctors, who have conducted the postmortem examination and the statement of PW-240, who was the first person to visit at the spot, it comes out that the answer to this question is in negative because there is no evidence on the file to show that apart from these two unidentified legs and head any other unidentified limb was recovered from the spot or any of the dead bodies recovered from the spot were having any of the limbs missing, similar to the unidentified limbs recovered from the spot.

427. As far as the plea of learned defence counsel that one headless body of deceased Rajinder Parsad was recovered from the spot which raises doubt about the authenticity of the skull alleged to be of assassin human bomb, is concerned, there is no force in this plea because PW-4, Dr.J.K.Kalra, who has conducted the post mortem examination of deceased Rajinder Parsad, has categorically deposed that when he examined the dead body of deceased Rajinder Parsad, it was intact and not headless technically.

428. On the contrary, upper part of the head of the front portion was missing but the skull was attached with the neck and as such the skull recovered from the spot which was having the face intact can not be linked with the Rajinder Parsad and it was neither the case of the prosecution nor the defence. This fact is further clear from the skiagrams of the x-ray films Ex.PW4/14 to Ex.PW4/20 coupled with the report of Dr.P.D.Jain, Ex.PW4/21 and the nature of the external injuries found on the dead body specially injury no.1, which was "mutilated lacerated wound around the neck below the level of chin in front of occipital bone at the back, upper part of the head was missing except a small piece of scalp attached to it", which means the injuries were found on the head of Rajinder Parsad and only part of the skull were missing and from this, it can not be said that the head was

totally chopped off and body was headless. At the same time, PW-4, was not cross examined by the learned defence counsels on this point, which further shows that the body of Rajinder Parsad was not headless in technical sense.

429. Needless to say, once it is proved that all the remaining dead bodies were either complete or were duly identified, there is nothing on the file to doubt the recovery of these limbs i.e two legs and one complete skull, as shown in the photographs Ex.PW119/71 to Ex.PW119/94, from the place of occurrence. On the contrary, it is proved that only torso of these two legs and the head was missing and all the remaining dead bodies were complete and duly identified.

430. Simply because of the fact that there was some confusion to PW-240 as to whether he deposited the limbs in the General Hospital, Sector 16 or in the P.G.I, it can not be said that the factum of the recovery itself is doubtful specially when the inquest report of these limbs was prepared on 31.8.1995 itself. No doubt, as submitted by learned defence counsel, there is some confusion as to where these two legs and the skull, was deposited by PW-240 after its recovery on 31.8.1995. Whereas it is admitted that it reaches P.G.I only on 4.9.1995 and kept in the dissection hall of the anatomy department whereas the police witnesses

alleged that it was kept in the Mortuary of the P.G.I but this aspect has no bearing on the factual aspect as to the recovery of these limbs from the spot.

431. At the same time, the confusion as to the deposit of these limbs is also clear from the testimony of PW-240 and it is duly explained on the file as how these limbs reached P.G.I. In this regard, a perusal of the inquest proceedings Ex.PW6/42, shows that after the recovery of these limbs from the spot, PW-240, moved an application with the Duty Doctor of G.H Sector 16 Chandigarh for the postmortem examination of those limbs, along with the request for the postmortem of the dead bodies.

432. It has been categorically stated by PW-16, Dr.Sandeep Singh Sawhney of Department of Forensic Medicine, Medical College, Chandigarh that on 2.9.1995, after conducting the postmortem examination of the dead bodies from 1.9.1995 till the next date, he had examined the two severed legs and the part of the skull in the Mortuary of Sector 16 Hospital. This statement was made by this witness on 4.9.1996 and was deferred for 6.9.1996 and when a question was put to this witness as to what he had done with the two severed legs and skull, he categorically explained that Inspector Nanha Ram asked him whether it is possible that

these two legs and skull remain and the remaining portion of the body is blown off. But before the witness could answer the question, an objection was raised by learned defence counsel, as to its admissibility and the further statement of the witness was deferred and when on the next date he was recalled for further statement that question was not put to the witness.

433. But the proceedings of the inquest of these limbs provides an answer to this question as a report has been made on the application that the facilities for the postmortem examination of these limbs is not available in the General Hospital, Sector 16, Chandigarh. As such, the same be taken to P.G.I and PW-16 has explained that he asked Inspector, Nanha Ram to put the two legs and the skull in the Mortuary Chamber and thereafter on 3.9.1995, when the investigations were taken over by the CBI and these limbs were inspected by the CBI team, it was decided that these limbs should be kept in the formalin to save it from decomposition.

434. At the same time, this fact is further proved on the file from the testimony of PW-20, Dr.J.L.Chaudhary, who deposed that on 31.8.1995, he constituted various teams to conduct the postmortem examination of the dead bodies received in the Hospital and marked the dead bodies to the various team. He and PW-16 Dr.Sawhney have categorically

deposed that no mortuary register was being maintained to enter the receipt of the dead bodies but only postmortem register is being maintained.

435. He further deposed that on 3.9.1995 he had the occasion to see two severed legs and a skull in the mortuary. He further deposed that on 3.9.1995 when CBI team also asked about the nature of limbs, Dr.Sawney (PW-16) explained that on 2.9.1995, Inspector Nanha Ram had asked him whether it is possible that the entire body of person should be blasted off and that only skull and lower limb would remain and he had stated that it is possible and Dr.Sawney also explained that he had also examined the two legs and skull to say so. During the cross examination of PW-20, the learned defence counsel submitted that he be permitted to examine the file from which PW-20 has refreshed his memory about the role played by Dr.Sahini, in examining the limbs but this was objected by the defence counsel and case was adjourned to 14.10.1996 to decide this point but on 14.10.1996 this point was not agitated as learned defence counsel continued the cross examination without going through the file but that file was made part of the record.

436. Accordingly, a perusal of the file shows that the facts disclosed by PW-20, were duly available in the file in black & white and this

fact clinches the entire issue and further proves that these limbs were recovered from the spot on 31.8.1995 itself and were taken to General Hospital, Sector 16 Chandigarh for postmortem examination and on 2.9.1995, these were examined by PW-16, Dr.Sahini after completion postmortem examination of the identified dead bodies, and on 3.9.1995 these were examined by PW-20, Dr.J.L.Chaudhary and the CBI team and then the same were taken to PGI. As such there is sufficient explanation on the file as to how these limbs were taken to the P.G.I.

437. Simply because of the fact that the recovery of these limbs have not been reflected in the DDR recorded by PW-240 while reaching Police Station or it is not mentioned in the inquest report of the dead body of Beant Singh, is not sufficient to doubt the recovery these limbs from the spot. In addition to this, it has been categorically stated by PW-6 that after conducting the postmortem examination on the dead body of deceased Beant Singh, he found that the death was because of the extensive deep burns and mutilating injuries suffered by the deceased because of bomb blast, which must have caused by an explosive device. Since there is no dispute regarding the identification of dead bodies of both the deceased, Beant Singh and Dr.Anil Duggal, there is no justification to discuss the statement of PW-6

as to how he confirmed the identity of the dead body to be of Beant Singh.

438. Similarly after conducting the postmortem on the dead bodies of Dr. Anil Kumar Duggal, he again reiterated that he died because of the injuries suffered in bomb blast. He also deposed about the handing over of the incriminating articles recovered from the dead body of both the deceased persons, which were later on examined by the CFSL authorities and confirmed to be having the traces of RDX.

439. Not even this, PW-6 further deposed that on 4.9.1995 he received two legs and a head being kept in a formalin for postmortem examination and on 5.9.1995 as per the orders of Director P.G.I., Ex.PW6/40-A, he conducted the postmortem examination of these limbs and as per his report, Ex.PW6/43, after examining two legs with feet, right shoe black in colour, which fitted the right foot of the severed leg and a mutilated head and neck, he concluded that both these legs belongs to the same person and they have been severed just above the knees by a blast which had created big lacerated wound at the upper ends of both the legs because of an explosive device. Although, he also opined that from these limbs, it comes out that these limbs are of young male but to establish the identity and the fact whether the legs and heads

belongs to a same person, a DNA test should be done.

440. He also proved that Ex.PW6/44 and Ex.PW6/45 are the impression of the right and left foot of these two legs and Ex.PW6/46 to Ex.PW6/49 are the four coloured photographs of the legs and Ex.PW6/50 to Ex.PW6/52 are the three photographs of the head, which were taken by him through his departmental photographer in his presence and which he had handed over to the CBI along with his report along with all other documents relating to this. He has also identified Ex.P50, as the same shoe which was brought to him along with severed legs and the skull and which was fitted to the right foot of the severed leg and which he wrapped in a wrapper, Ex.P51, along with the epidermal cast of both the foots.

441. The case of the prosecution is that as per recommendation of Dr.Inderjit Diwan, PW-245, Dr.Lalji Singh Director **Centre for Cellular and Molecular Biology,Hyderabad**, who is a DNA expert, was called as this laboratory was the first laboratory in India, which have the facility of comparison of DNA and accordingly on 5.9.1995 Dr.Lalji reached Chandigarh and visited P.G.I and examined the two legs and the head and thereafter took the samples of blood of Harnek Singh, father of Dilawar Singh and Chamkaur Singh brother of

Dilawar Singh because by that time the C.B.I received a information that the two legs and the skull are of deceased Dilawar Singh, who acted as a suicide bomber and this fact was also confirmed by Chamkaur Singh, PW-99.

442. Accordingly, PW-245 himself obtained the blood samples of Harnek Singh and Chamkaur Singh as per the identification cards, Ex.PW245/4 and Ex.PW245/3. He also took into possession some muscle pieces from both the legs and the head allegedly of Dilawar Singh and also took the photographs and affixed the same on the identification form, Ex.PW245/5. He further submitted that on 6.9.1995 he again took the blood of Surjit Kaur, mother of Dilawar Singh, as per the identification form, Ex.PW245/6, in the presence of Doctors as well as in the presence of officials, who also signed those forms.

443. As far as the plea of learned defence counsel regarding doubt as to the time when the samples of blood of Harnek Singh etc and the authenticity of the report of PW-245, is concerned, this plea has been put forward on the assumption that PW-246, A.K.Chanda, in whose presence, the blood samples were taken by the Doctors of the P.G.I, alleged that the samples were taken at about 4.30 PM as mentioned in the memo, Ex.PW99/1, in the presence of PW-245, Dr.Lalji Singh but Dr.Lalji

Singh admitted that he reached at P.G.I only about 6.30 PM. However, no importance to this fact can be given because when Dr.Lalji was cross examined on this point, he stated that he can not pin point the exact time, when he reached at Chandigarh and at P.G.I and it may be 4.00 PM or 4.30 PM, 5.00 or 6.00 PM.

444. At the same time, PW-99, Chamkaur Singh, when stepped into the witness categorically admitted that although he identified the two legs and the skull as the remnants of the body of his brother, Dilawar Singh but since his father was having some doubt, their blood samples were taken by the Doctors for comparison and his signatures were also obtained on the identification form, Ex.PW45/3 as well as of his parents.

445. Much has been argued by learned defence counsel on the point that these identifications form have been left blank and requisite information in all the columns has not been filled up, which shows that these were created later on. However, this plea is also based on needless apprehension and without any basis because PW-6, Dr.Inderjit Diwan, PW-99, Chamkaur Singh, PW-245, Dr.Lalji Tondon have categorically stated that their blood samples were taken by the Doctors as per the memo Ex.PW99/1, which is signed by PW-99 and his father Harnek Singh and they have also

signed the identification forms.

446. No doubt, as stated by PW-6 some samples of tissues were also taken by PW-6 but he has categorically stated that all those samples were taken by him on the direction of PW-245 and all those samples were sealed in a parcel and was handed over to PW-245 as per the receipt, Ex.PW6/88 and PW-245, has also admitted this fact and also brought the main cartoon, Ex.PW245/Article-1, in which all the samples were taken to Laboratory. Thus there is nothing on the file to disbelieve the taking of blood samples of Chamkaur Singh and his parents and tissues from the two legs and the skull.

447. Now the question comes whether the report of PW-245, exhibited as PW245/7 is a admissible piece of evidence or not. After challenging the procedure for taking the samples, the learned defence counsel submitted that the report of PW-245 is not conclusive piece of evidence as first of all the DNA test is not a conclusive evidence as to the identity of a person and at the same time, the report Ex.PW245/7 itself shows that some of the tissues as mentioned in the report as Ex.G to Ex.T were found to be not fit for DNA finger prints because those were decomposed and if it was so, the other samples exhibited as Ex.D to Ex.F of the same disputed two legs and the skull, can not be held to

be fit for comparison as the entire body was kept in the same formalin and the decomposition took place in entire parts.

448. He further submitted that the main test recommended for DNA matching, known as **RFLP** test, has not been conducted by PW-245 and in addition to that all the five recognized method for DNA testing has not been carried out by PW-245, which makes the report of PW-245 highly doubtful as the PCR method of DNA matching is not a full proof test and is only a technique used for DNA amplification as admitted by PW-245, which further shows that the report of PW-245 is waste piece of evidence and can not be considered for any purpose whatsoever.

449. At the same time, no permission of the court or the consent of the concerned persons i.e PW-99 and his parents was obtained before taking the blood samples, which further shows that the entire process leading to the report, Ex.PW245/7, is doubtful. Not even this, one more lacuna which makes the report is highly doubtful, is that in the report, Ex.PW245/7 itself, it is mentioned that the blood samples and the tissues of the deceased were received of the deceased in laboratory on 7.9.1995 whereas PW-245 alleged that these were taken to Laboratory on 8.9.1995 and there is no evidence as to with whom the samples remains from 5.9.1995 to 8.9.1995 and in what condition.

450. However, after going through the case law relied upon by learned defence counsel on this aspect, it comes out that none of the grounds put forward by the learned defence counsel to challenge the report of PW-245 is of any merit and has been put forward just to confuse the matter. Needless to say in **Gautam Kundu's case (Supra)** there was a civil litigation leading a dispute of paternity of a child and when that dispute was referred for determination on the basis of blood grouping test, which is a circumstantial evidence, the Hon'ble Apex Court held that blood grouping test is a useful test to determine the question of disputed paternity and the courts can rely upon such reports as a circumstantial evidence. However, no person can be compelled to give samples of blood for analysis against her will and no adverse inference can be drawn against her for this refusal.

451. However, how this authority is applicable to the facts in hand is a fact which remains unexplained on the file and thus of no help to the defence. Similarly in **Hira Singh Case's (Supra)**, there was a dispute of paternity and to decide that dispute the DNA test was prayed for but that was declined and the Hon'ble Apex Court held that the consent of the person concerned is necessary before DNA test is conducted and when mother refused to give consent on behalf of minor child, the court

can not direct such tests.

452. However, in the present case PW-99 has categorically deposed that he and his parents had given the blood samples without any objection and he was not even cross examined on this aspect to show that their blood samples were taken forcibly and against their wishes. As such this plea of learned defence counsel is without any basis.

453. As far as the procedure for taking the blood samples and the authenticity of identification forms Ex.PW245/3 to Ex.PW245/6, is concerned, again there is nothing on the file to say that these forms are incomplete or fabricated. On the contrary, on these forms a certificate is given that blood samples of Chamkaur Singh and his parents and tissues and muscle from two legs and skull were taken along with the photographs in the presence of PW-245 and the doctors of the P.G.I and Chamkaur Singh and his father Harnek Singh also signed these forms. It is also mentioned that what is the purpose of test and whose sample is taken and for what purpose. No doubt the particulars of the case FIR etc has not been mentioned in these forms along with the person present but this is not sufficient to dispute the authenticity of these forms specially when from these forms it is proved that as stated by the witnesses blood samples of

PW-99 and his father along with the muscle and tissues of two legs and the skull were taken on 5.9.1995 and blood samples of mother of PW-99 was taken on 6.9.1995 and all the samples of the muscles, tissues and blood samples were sealed by PW-6 by his own seal and were handed over to PW-245, who himself took them to the Laboratory and those samples remain in his custody as stated by him and as such there is no question of missing of any link evidence in this regard.

454. Now the question comes what is the authenticity of the report of PW-245 and what is the evidentiary value of DNA test in the courts to decide a dispute of identity. In this regard, the learned defence counsel has relied upon **Sakthivel's Case Supra** where the Hon'ble Madras High Court, after considering the provision of Section 45 of the Evidence Act held that the DNA test report is only a piece of evidence to corroborate the oral evidence and thus it is only a supporting evidence of an expert. Thus, no doubt, DNA profiling is not a full proof and conclusive evidence in the process of investigation but it certainly corroborates the other evidence and in this case also prosecution has opted for DNA test to establish the identity of two legs and a skull, just to be more sure about the facts stated by PW-99, Chamkaur Singh and his parents, who have otherwise identified that these two legs and skull belongs to deceased Dilawar

Singh and the DNA report was taken only to remove any doubts.

455. As far as the procedure to conduct the DNA profile and its evidentially value, is concerned, as relied upon by learned defence counsel in reference Guide on **Forensic DNA evidence by Judith.A.Mekenna** and two other authors, a procedure on technical issue that arise in considering the admissibility of and weight to be accorded to DNA reports, was clarified and as per these authors, the best established form of Forensic DNA identification is **RFLP** analysis. The authors further held that the DNA analysis is based on well established principles of the wide genetic variability among humans and the presumed uniqueness of an individuals genetic make-up and in this technique the human chromosomes are isolated. The authors further explained that most DNA carrying cells in a human contain the same information encoded in the approximately 3.3 billion base pairs per set of chromosomes in each cell. More than 99% of the base pairs in human cells are the same for all individuals which accounts for the many common traits that make human an identifiable species. The remaining base pairs (about 3 million) are particular to an individual (identical twins excepted), which accounts for most of the wide variation that makes each person unique.

456. Similarly, **in DNA testing; an introduction for non scientist; an illustrated explanation by DONALD E.RILEY, Ph.D. University of Washington, (Copyright 1998)**, the learned author explained the DNA in easy terms in the following words:-

"DNA is material that governs inheritance of eye color, hair color, stature, bone density and many other human and animal traits. DNA is a long narrow string-like object. A one foot long string or strand of DNA is normally packed into a space roughly equal to a cube 1/millionth of an inch on a side. This is possible only because DNA is a very thin string.

Our body's cells each contain a complete sample of our DNA. One cell is roughly equal in size to the cube described in the previous paragraph. There are muscle cells, brain cells, liver cells, blood cells, sperm cells and others. Basically, every part of the body is made up of these tiny cells and each contains a sample or complement of DNA identical to that

of every other cell within a given person. There are a few exceptions. For example, our red blood cells lack DNA. Blood itself can be typed because of the DNA contained in our white blood cells.

Not only does the human body rely on DNA but so do most living things including plants, animals and bacteria.

A strand of DNA is made up of tiny building blocks. There are only four, different basic building blocks. Scientists usually refer to these using four letters for the four different building blocks. The letters are: A.T.G. And C. These four letters are short nicknames for more complicated chemical names, but actually the letters (A.T.G and C) are used much more commonly than the chemical names so the latter will not be mentioned here. Another way of referring to the building blocks or letters is to call them bases.

457. Keeping in view the above discussed

technical aspects, let us consider the report of PW-245, Ex.PW245/7. A perusal of this report shows that PW-245 has carried out DNA profiling by **polymerase chain reaction and HLA DQ Alpha PCR test** because the samples of DNA were very small in quantity and for conducting RFLP analysis larger amounts of undegraded DNA samples is required, which was not available in the present case and accordingly out of the disputed samples exhibited as Ex.D to Ex.T, in the report, Ex.PW245/7, only Ex.D, E and F i.e the tissues of muscles taken from right leg, left leg and the head of the skull were found to be fit for DNA profile whereas the Ex.G to Ex.T were found to be highly degraded because of improper storage leading to decomposition. After amplification of DNA by PCR method, the HLA DQ Alpha typing was done and it was held that Ex.D, E and F (right leg muscle, left leg muscle and tissue from the skull) are positive for DQ Alpha 1 & 4 which are also present in Ex.A, B i.e the blood of mother and father of the deceased, which indicates that these have been inherited from the sources of parents and on this premises, PW-245 concludes that both the legs and the head belongs to one and the same individual, who is a biological off spring of Smt.Surjit Kaur and Harnek Singh and as such these body parts are of Dilawar Singh son of these persons, who was only missing son of these persons.

458. Needless to say, the DNA test is a perfect

test because the DNA profile of two individuals matches only one in one lakh persons, which shows that it is a 100% Scientific test having no scope of doubts.

459. No doubt PW-245 was cross examined by learned defence counsel, who took great pains to trace the literature as to the technical aspect of the DNA test and tried to challenge the report of PW-245 on the grounds that it has not been properly carried out as the disputed samples of DNA of two legs and the skull was highly decomposed and were degraded and were not fit for analysis and PCR method of analysis is not conclusive. However, from the reasons given by PW-245 in his report, Ex.PW245/7 along with all the annexures and the cross examination faced by this witness, it clearly spells out that this witness was having no motive to give a false report.

460. He has categorically stated that he compared only those profiles which were fit for analysis, since a DNA in a particular tissue can survive, whereas it can die in other tissue because of their unique chromosomes. As far as the technical objections regarding depositing of samples and mentioning of date of receipt of the samples as 7.9.1995 is concerned again this is without any basis because in the report itself it is mentioned at so many places that the samples

were collected by PW-245 in Hypernised bottles and were received in the laboratory on 8.9.1995 and the date 7.9.1995 on the heading may have been because of typographical mistake.

461. At the same time, PW-245 has categorically stated that all the samples remained with him from the time those were taken till it reached the Laboratory and he has also explained that he has done the requisite tests from the samples taken by him in the hypernised bottles and the samples taken by PW-6 were also used for conducting requisite test. As far as the plea of learned defence counsel that PW-245 has failed to bring his bench notes and as such he could not cross examine him on this aspect, is concerned, it makes no difference because testimony of PW-245 is an expert witness and it can be evaluated in the light of the oral evidence led by the prosecution, as to the identity of the two legs and the skull. Therefore, the opinion of the PW-245 can be pressed into service to corroborate the stand taken by PW-99.

462. Now let us discuss the evidence of PW-99, who has given the primary evidence as to the identity of two legs and the skull. Accordingly, this witness, who is real brother of deceased Dilawar Singh, when stepped into the witness box categorically deposed that on 30.8.1995, his brother, Dilawar Singh along with accused Balwant

Singh stayed in his house at Chandigarh and on the next morning when he left the house in Car No. DBA-9598, Ex.P76, Dilawar Singh told him that he should flee away from Chandigarh along with family otherwise Police will kill them as Dilawar Singh and Balwant Singh are going to perpetuate a big offence.

463. He further deposed that on 31.8.1995 at 7.00 p.m, he heard television news and came to know that Beant Singh, Chief Minister has been assassinated in Bomb blast and at that moment he realised that his brother Dilawar Singh is involved in this assassination and he left his Chandigarh house for his native place along with his family. On 2.9.1995, he again read the entire matter in the news paper along with the photographs of the car and was convinced that his brother Dilawar Singh and Balwant Singh are involved in this blast.

464. He further deposed that on 5.9.1995, this witness contacted the CBI and then he along with his father went to P.G.I and saw two legs and the skull and his father identified the same to be of Dilawar Singh, as per the memo of identification, Ex.PW99/1.

465. He further deposed that he has also seen the one black lace shoe, Ex.P50 and it was the same shoe which his brother was wearing on the morning

of 31.8.1995, when he left his house.

466. He further deposed that after that their blood samples were taken and they were sure that his brother has killed himself to kill Beant Singh and on 5.11.1995, his father moved an application, Ex.PW99/5 to take the delivery of the remnants of Dilawar Singh and thereafter they received the same from the Hospital as per the receipt, Ex.PW99/6 and cremated the same.

467. As far as the plea of learned defence counsel regarding non examination of parents of deceased Dilawar Singh, is concerned, it makes no difference because it was PW-99, who knows all the facts and he has also proved the stand of his parents on question identification of body parts of deceased Dilawar Singh.

468. Thus, the oral testimony of PW-99 coupled with the facts and circumstances proved in evidence and admission made by Balwant Singh corroborated by the report of DNA expert PW-245, Ex.PW245/7, it is proved beyond doubt on file that two legs and skull recovered from the spot were body parts of the deceased Dilawar Singh, who acted as a suicide bomber and caused this blast and executed the plan to kill Beant Singh, as per the conspiracy hatched between Balwant Singh and deceased Dilawar Singh and others.

POINT FOR DETERMINATION NO: 2.

469. In view of above discussion and conclusion now let us come to the second point for determination, which is the most material point, as far as the accused contesting this trial are concerned, that:-

Whether this bomb blast was caused by the deceased Dilawar Singh in execution of a conspiracy hatched by accused Wadhawa Singh and Mehal Singh (proclaimed offenders) with the other accused persons, who were absconding and who are facing trial in this case and all of them were the part and parcel of that conspiracy and committed different acts of omissions and commissions in pursuance of their conspiracy leading to the killing of deceased Beant Singh and others?

470. To decide this controversy, we will have to keep in mind, that nature of the offence and its magnitude, itself shows that this operation was not possible only by accused Balwant Singh and deceased Dilawar Singh, as alleged by Balwant Singh, alone as it involves multifarious preparations and collection of huge materials to achieve the

ultimate goal of murder of Late Beant Singh. On the other hand, this operation was possible only with the help of many more persons that too after hatching a well planned conspiracy involving men, materials, money, motivation and movements, as put forward by the prosecution. Thus let us scan the evidence of the prosecution to decide this core question.

471. This court is not oblivious of the fact that keeping in view the nature of offence and the circumstances under which it has been committed, there cannot be any direct eye witness, who can say how this blast took place, by whom and in what manner, because it is not only difficult but almost impossible to have direct evidence of conspiracy and entire case is to be judged from the circumstantial evidence brought on the file.

472. As far as the question of finding guilt solely on the basis of circumstantial evidence, is concerned, as stated earlier, to know the true genesis and find the guilt on the basis of the circumstantial evidence, the Hon'ble Apex Court has laid down the guidelines from time to time and the process started with **Hanumant Govind Nargundkar Vs. State of M.P, AIR 1952 Supreme Court 343** wherein the law was laid down in the following terms:-

"It is well to remember that in cases

where the evidence is of a circumstantial nature, the circumstance from which the conclusion of guilt is to be drawn should be in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

473. Yet again in **Sharad Birdhichand Sarda Vs. State of Maharashtra, AIR 1984, Supreme Court, 1622**, while dealing with circumstantial evidence, it has been held that the following conditions must be fulfilled before a case based on circumstantial evidence is said to be fully proved including the guilt of the accused persons:-

- (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established.
- (2) The facts so established should be consistent only with the hypothesis

of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

- (3) The circumstances should be of a conclusive nature and tendency.
- (4) They should exclude every possible hypothesis except the one to be proved; and
- (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must the act must have been done by the accused.
- (6) Suspicion, however grave, cannot be substituted for a proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of circumstantial evidence.

It was further observed that:

"We can fully understand that though the case superficially viewed bears an ugly look so as to prima facie shock the conscience of any Court yet suspicion, however great it may be, can not take the place of legal proof. A moral conviction however strong or genuine can not amount to a legal conviction supportable in law.

It must be recalled that the well established rule of criminal justice is that "fouler the crime higher the proof". In the instant case, the life and liberty of a subject was at stake. As the accused was given a capital sentence, a very careful, cautious and

meticulous approach was necessary to be made."

The murder might have been committed in a very cruel and revolting manner but that may itself be a reason for scrutinizing the evidence a bit more closely.

474. Similarly in, **Bhagat Ram Vs State of Punjab, AIR 1954, Supreme Court, page 621**, it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt.

475. Similarly in, **C.Chenga Reddy Vs. State of A.P, 1996(10) SCC, page 193** wherein it has been observed that:-

"In case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence."

476. In **Padala Veera Reddy Vs. State of A.P, AIR 1990, Supreme Court, 79** it was laid down that when

a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

1. the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;
2. those circumstances should be of a definite tendency unerringly pointing towards guilty of the accused.
3. The circumstances , taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
4. the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

477. Sir Alfred Wills in his admirable book '**Wills**' Circumstantial Evidence (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence:

1. the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum;
2. the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability;
3. in all cases, whether of direct or circumstantial evidence the best

evidence must be adduced which the nature of the case admits;

4. in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt and if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.

478. In **state of Goa Vs.Sanjay and others 2007(2)RCR(criminal) page 458**, again all the above principles were reiterated.

479. As stated earlier, the entire case of the prosecution is that deceased Beant Singh along with 16 other persons was killed by way of human bomb and assassin Dilawar Singh in consequence of a well laid conspiracy by all the accused persons facing trial in this case along with the other persons, who have been declared proclaimed offenders or who are absconding. As such first question comes what is the legal position as to the factum of conspiracy and the evidence required to prove the same.

480. Section 120-A of the Indian Penal Code defines 'Criminal Conspiracy' as follows:

"When two or more persons agree to do ,
or cause to be done
(a) an illegal act

- (b) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy.

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation- it is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

481. Section 120-B which prescribes in sub Section (1) the punishment for criminal conspiracy provides:

"Whoever is a party to a criminal conspiracy to commit an offence punishable with death, (imprisonment for life) or rigorous imprisonment for a term of two year or up wards, shall, where no express provision is made in the Court for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence."

482. Like most crimes, conspiracy requires an act (actus reus) and accompanying mental state (mensrea). The agreement constitutes that act, and the intention to achieve the unlawful objective of that agreement constitutes the required mental state. In the face of modern organized crime,

complex business arrangements in restraint of trade, and subversive political activity, conspiracy law has witnessed expansion in many forms. Conspiracy criminalises in agreement to commit a crime. All conspirators are liable for crimes committed in furtherance of the conspiracy by any member of the group, regardless of whether liability would be established by the law of complicity.

483. To put it differently, the law punishes conduct that threatens to produce the harm, as well as conduct that has actually produced it. Contrary to the usual rule that an attempt to commit a crime merges with the complete offence, conspirators may be tried and punished for both the conspiracy and the completed crime. The rationale of conspiracy is that the required objective manifestation of disposition to criminality is provided by the act of agreement. Conspiracy is a clean destined activity. Persons generally do not form illegal covenants openly. In the interests of security, a person may carry out his part of a conspiracy without even being informed of the identity of this kind can rarely be shown by direct proof, it must be inferred from circumstantial evidence of co-operation between the accused. What people do is, of course, evidence of what conspiracy, the prosecution must show that he agreed with others that together they would accomplish the unlawful

object of the conspiracy.

484. Another major problem which arises in connection with the requirement of an agreement is that of determining the scope of a conspiracy- who are the parties and what are their objectives. The determination is critical, since it defines the potential liability of each accused. The law has developed approach the question of scope, Once such model is that of a chain, where each party in accomplishing the criminal objectives of the conspiracy. No matter how diverse the goals one objective; to promote the furtherance of the enterprise. So far as the mental state is conspiracy are the intent to agree and the intent to promote the unlawful objective of the conspiracy. It is the intention to promote a crime that lends conspiracy its criminal cast.

485. Conspiracy is not only a substantive crime. It also serves as a basis for holding one person liable for the crimes of others in cases where application of the usual doctrines of complicity would render that person liable. Thus, one who enters into conspiratorial foreseeable crime committed by every other member of the conspiracy in furtherance of its objectives, whether or not he knew of the crimes or aided in their commission. The ration able is that criminal acts done in furtherance of a conspiracy may be

sufficiently dependent upon the encouragement and support of the group as a whole to warrant treating each member of a casual agent to each act. Under this view, which of the conspirators committed the substantive offence would be less significant in determining the defendant's liability than the fact that the crime was performed as a part of a larger division of labour to which the accused had also contributed his efforts.

486. Regarding admissibility of evidence, loosened standards prevail in a conspiracy trial. Contrary to the usual rule, in conspiracy prosecutions, any declaration by one conspirator, made in furtherance of a conspiracy and during its pendency, is admissible against each co-conspirator. Despite the unreliability of hearsay evidence, it is admissible in conspiracy prosecutions. Explaining this rule, Judge Hand, in (Van Riper Vs. United States 13 F.2d 961, 967 (2d Cir, 1926)) said:

"Such declarations are admitted upon no doctrine of the law of evidence, but of the substantive law of crime. When men enter into an agreement for an unlawful end, they become ad hoc agents for one another, and have made 'a partnership in crime'. What one does pursuant to their common purpose, all do, and as declarations may be such acts, they are competent against all."

487. Thus conspirators are liable on an agency theory for statements of co-conspirators, just as they are for the overt acts and crimes committed by their conferrers.

488. Interpreting the provisions in Sections 120A and 120B of the IPC, the Hon'ble Apex Court in the case of **Yash Pal Mittal Vs. State of Punjab, (1977) 4 SCC 540**, in para 9 at pages 543 and 544, made the following observations:

" The offence of criminal conspiracy under Section 120-A is a distinct offence introduced for the first time in 1913 in Chapter V-A of the Penal Code. The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-conspirators in the main object of the conspiracy. There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal several offences may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even

though there may be sometimes misfire or overshooting by some of the conspirators. Even if some steps are resorted to by one or two of the conspirators without the knowledge of the others it will not affect the capability of those others when they are associated with the object of the conspiracy."

489. The significance of criminal conspiracy under Section 120-A is brought out pithily by the Hon'ble Supreme Court in, **Major E.G Barsay Vs. State of Bombay, (1962) 195:**

"The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Under Section 43 of the Indian Penal Code, an act would be illegal if it is an offence or it is prohibited by law. Under the first charge the accused are charged with having conspired to do three categories of illegal acts, and the mere fact that all of them could not be convicted separately in respect of each of the offences has no relevancy in considering the question whether the offence of conspiracy has been committed. They are all guilty of the offence of conspiracy to do illegal acts, though for individual offences all of them may not be liable."

490. Similarly the Hon'ble Bombay High Court in **Dr.Dattatrya Narayan Samant and others Versus State**

of Maharashtra reported in 1982 Cr1.L.J. 1025

"The most important ingredient of the offence of conspiracy is the agreement between two or more persons to do an illegal act. The illegal act may or may not be done in pursuance of the agreement, but the very agreement is an offence punishable under S.120-B of the Penal Code. Entering into an agreement by two or more persons to do an illegal act or legal act by illegal means and not merely an intention to do such acts constitutes the very quintessence of the offence of conspiracy. So long as such a design rests in intention only, it is not indictable. The prosecution must further show that the agreement was entered into and that there was a meeting of minds between two or more persons or as is described etymologically, conspiracy means breathing together and two people cannot breathe together unless they put their heads together. The gist of offence of conspiracy lies not in doing the act or effecting the purpose for which the conspiracy is formed, nor in attempting to do any of the act, nor in instigating others to do them, but in the forming of the scheme of agreement between the parties. It is well settled that an agreement can be proved either by direct evidence or by circumstantial evidence or by both. What the prosecution must prove by the positive evidence is that there was a positive agreement in the minds of two or more persons or there was a meeting of minds to do an unlawful act or to do a lawful act by unlawful design. For example, if two burglars should decide independently to burgle the same house on the same night, their independent decision would not constitute a conspiracy. A conspiracy

is not merely a concurrence of wills, but a concurrence resulting from agreement between the two."

491. Similarly, the question comes what is the amplitude of Section 10 of the Evidence Act to prove a conspiracy and the Hon'ble Apex Court in **State of Tamilnadu Versus S. Nalini and others, 1999 Cr1.Law Journal, page 3124**, known as **Rajiv Gandhi murder case**, while taking into consideration the entire case law on the point, laid down some of the broad principles governing the law of conspiracy in the following words:-

(1) Under Section 120 A IPC offence of criminal conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. When it is a legal act by illegal means over act is necessary. Offences of criminal. conspiracy is an exception to the general law It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but there has to be agreement to carry out the object of the intention, which is an offence. The question for consideration in case is did all the accused have the intention and did they agree that the crime be omitted it would not be enough

for the offence of conspiracy when some of the accused merely entertained a wish, howsoever horrendous it may be, that offence be committed.

(2) Acts subsequent to the achieving of the object of conspiracy may tend to prove that a particular accused was party to the conspiracy. Once the object of conspiracy has been achieved, any subsequent act, which may be unlawful, would not make the accused a part of the conspiracy like giving shelter to an absconder.

(3) Conspiracy is hatched in private or in secrecy. It is nearly impossible to establish a conspiracy by direct evidence. Usually, both the existence of the conspiracy and its objects have to be inferred from the circumstances and the act and conduct of the accused.

(4) Conspirators may for example, be enrolled in a chain- A enrolling B, B enrolling C, and so on; and all will be members of a single conspiracy if they so intend and agree, even though each member knows only the person, who enrolled him and the person whom he enrolls. There may be a kind of umbrella-spoke enrollment,

where a single person at the center does the enrolling and all the other members are unknown to each other, though- they know that there are to be other members. These are theories and in practice it may be difficult to tell which conspiracy in a particular case falls into which category. It may however even overlap. But then there has to be present mutual interest. Persons maybe members of single conspiracy even though each is ignorant of the identity of many others who may have diverse roles to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role.

(5) When two or more persons agree to commit a crime of conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no step is taken by any such person to carry out their common purpose, a crime is committed by each and every one who joins in the agreement. There has thus to be two conspirators and there may be more than that. To prove the charge of conspiracy it is not necessary that intended crime was committed or not. If committed it may further help prosecution

to prove the charge of conspiracy.

(6) It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummations of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left.

(7) A charge of conspiracy may prejudice the accused because it forces them into a joint trial and the court may consider the entire mass of evidence against every accused. Prosecution has to produce evidence not only to show that each of the accused has knowledge of the object of conspiracy but also of the agreement. In the charge of conspiracy the court has to guard itself against the danger of unfairness to the accused. Introduction of evidence against some may result in the conviction of all, which is to be avoided. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence, prosecution tries to implicate the accused not only in

the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficulty interacting the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy. As observed by Judge learned Hand "this distinction is important today when many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders.

(8) As stated above it is the unlawful agreement and not its accomplishment, which is the gist or essence of the crime of conspiracy. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished. It is the unlawful agreement which is the gravamen of crime of conspiracy. The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts and conduct of the conspirators. The agreement need not be

entered into by all the parties to it at the same time but may be reached by successive actions evidencing their joining of the conspiracy.

(9) It has been said that a criminal conspiracy is a partnership in crime, and that there is in each conspiracy a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor. This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done or written by each of them. And this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incidental to and growing out of the original purpose. A conspirator is not responsible, however, for acts done by co-conspirator after termination of the conspiracy. The joinder of a conspiracy by a new member does not create a new conspiracy nor does it change the status of the other conspirators

individually or in groups perform different tasks to a common end does not split up a conspiracy into several different conspiracies.

(10) A man may join a conspiracy by word or by deed. However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the objects of a conspiracy and goes along with other conspirators, actually standing by while the others put the conspiracy into effect, is guilty though he intends to take no active part in the crime.

492. To proceed further let us see what sequence of events have been attributed by the prosecution to prove the birth of conspiracy, association of different persons with each other to hatch the conspiracy, preparations made by the accused persons and its execution. In this regard the prosecutions has relied upon the following sequences:-

1. Accused Mahal Singh and Wadhawa Singh,

since proclaimed offenders, prevailed upon Jagtar Singh Hawara to eliminate S.Beant Singh, he being the main hurdle in creation of 'Khalistan' and enemy number one of the Sikh community.

2. Jagtar Singh Hawara came to India to do the needful and stayed with the absconding accused Kuldeep Singh @ Ram Singh in H.No.341-A, Nandgram Colony, Ghaziabad (UP).

3. Sometime in March/April 1995, accused Harjit Singh, who is an old friend Balwant Singh, came to India and met Balwant Singh at Patiala and stayed with him and both of them also agreed to kill Beant Singh because of his atrocities on Sikh community. Balwant Singh agreed to do, provided necessary inputs are made available. Harjit Singh assured all help to Balwant Singh and Balwant Singh gave the telephone number of Bhushan Sirhandi for future contacts in this regard.

4. Some time in early June, 1995 Harjit Singh rang up Balwant Singh on the aforesaid Telephone Number and told him that some old sikh gentleman would contact him in connection with the task they had

disclosed and agreed to execute.

5. In June, 1995, Manjinder Singh @ Babaji, s/o Ujagar Singh (a BKI activist), came to Delhi and stayed in room no.37 of Gurudwara Seesh Ganj, Delhi. Said Manjinder Singh along with Jagtar Singh Hawara established contacts with accused Balwant Singh on the telephone number of Bhusahn Sirhindi.

6. On June, 23.6.1995, Manjinder Singh @ Babaji booked Room No.203 in Surya Guest House, Darya Ganj, Delhi, where he, accused Balwant Singh and Jagtar Singh Hawara assembled and discussed the security arrangement of S.Beant Singh and also the modalities to assassinate S.Beant Singh.

7. After returning from Delhi to Patiala, accused Balwant Singh met Dilawar Singh and discussed with him his meeting with Manjinder Singh @ Babaji and Jagtar Singh Hawara. Both Balwant Singh and Dilawar Singh decided to work together to carry out the plan to assassinate S.Beant Singh. They also associated accused Lakhwinder Singh, who was their close friend, in the conspiracy

8. Accused Jagtar Singh Hawara contacted Shamsheer Singh s/o Surjit Singh r/o Village Ukasi Jattan, Distt Patiala, some time in June, 1995 and joined him in the conspiracy.

9. In July, 1995 accused Paramjeet Singh, who was already member of conspiracy, introduced Jagtar Singh Hawara to Jagtar Singh Tara in New Delhi, and told him that accused Jagtar Singh Hawara is a member of Babbar Khalsa International and had returned from Pakistan. Paramjeet Singh requested Jagtar Singh Tara to help Jagtar Singh Hawara in the 'task' for which Jagtar Singh Tara agreed.

10. Later on, in the same month i.e July, 1995 Paramjeet Singh, Navjot Singh and Jagtar Singh Hawara met Jagrup Singh at his house in Mohali, Paramjeet Singh told them that S.Beant Singh, then CM Punjab and KPS Gill DGP Punjab were to be killed, as they were responsible for the killing of several jathedars in false encounters. Jagtar Singh Hawara assured the availability of arms and explosives for this purpose and all the aforesaid agreed to the said plan.

11. In the first week of July, 1995 accused Jagtar Singh Hawara held a meeting with accused Balwant Singh at latter's residence i.e H.No.68/A, Rattan Nagar, Patiala and discussed the security arrangements for S.Beant Singh. They finalised the plan to kill S.Beant Singh through a 'human bomb' in the Punjab & Haryana Civil Secretariat for which they decided to get stitched a cloth belt to be stuffed with explosives etc which was to be strapped by the assassin. They also decided to procure an Ambassador Car to facilitate the entry of the assassin into the Secretariat. Jagtar Singh Hawara took up the responsibility of arranging the car. Few more uniforms were also got stitched as suggested by Jagtar Singh Hawara.

12. Around 10th August, 1995 Jagtar Singh Hawara and Shamsher Singh engaged Truck No. PB12-A-7947 of Sapinder Singh alias Pappu (Shamsher's cousin) from Village Lalroo and in the said Truck they went to a place near Ajnala in Amritsar Distt. close to Indo-Pak border and from there brought two bags full of explosives. The said bags were brought in the said truck

to Village Ukasi Jattan. Shamsheer Singh & Jagtar Singh Hawara concealed these bags in the house of Shamsheer Singh in Village Ukasi Jattan, Distt. Patiala.

13. Accused Jagtar Singh Hawara, brought a big sack on a Scooter from the house of Shamsheer Singh in Village Ukasi Jattan to the house of accused Nasib Singh in Village Jhingran Kalan, P.S.Kurali, Distt. Ropar. The said big sack contained two 'kattas' containing explosives and remote control devices etc. Accused Nasib Singh at the behest of Jagtar Singh Hawara concealed the said explosives etc in his house fully knowing that it will be used to kill Beant Singh.

14. Jagtar Singh Hawara and Jagtar Singh Tara purchased a steel grey colour Ambassador Car No. DBA-9598 on 20.8.1995 for Rs.32,000/- from Smt.Reva Dutta, w/o Shri S.K.Dutta, r/o Paschim Vihar, New Delhi, to be used in the commission of the crime. Jagtar Singh Tara had falsely signed the delivery note of the said car as Basant Singh. Jagtar Singh Tara brought car no. DBA-9598 to the house No.B-50, Vishwakarma Park, Laxmi Nagar, Shakarpur, Delhi of Paramjit Singh. Paramjit Singh

kept the said car at his house from 20th August to the morning of 24th August, 1995.

15. On 23.8.1995, Jagtar Singh Hawara telephonically sent a coded message to Jagtar Singh Tara at the residence of Shri Mohan Raj Shekhar, his employer, to reach Punjabi University, Patiala on the next day with the said car.

16. On 24.8.1995, Jagtar Singh Tara along with Paramjeet Singh left Delhi by Car No. DBA-9598 and reached Punjabi University, Patiala, where accused Jagtar Singh Hawara and Balwant Singh met them. They decided that the next meeting would be held in Gurdwara Dukh Nivaran at 7.00 a.m next day i.e 25.8.1995.

17. On 25.8.1995, Paramjeet Singh and Jagtar Singh Tara reached Gurudwara Dukh Nivaran, Patiala, in Car No. DBA-9598, where Jagtar Singh Hawara, Balwant Singh and Dilawar Singh were already present. Thereafter Jagtar Singh Hawara, Paramjeet Singh, Balwant Singh, Jagtar Singh Tara and Dilawar Singh left Patiala in Car No. DBA-9598 and reached Village Jhingra Kalan, P.S.Kurali, Distt. Ropar. They

collected two bags containing remote control devices, electric wires and explosives (RDX) etc from the house of Nasib Singh, where they were earlier kept by Jagtar Singh Hawara.

18. Thereafter, on the same day i.e 25.8.1995, all of them reached H.No.981, Phase 4, Mohali of accused Gurmeet Singh who was also a close friend of accused Balwant Singh and Dilawar Singh and who was also having leaning towards task and thus made part of conspiracy. Jagtar Singh Hawara, kept some of the explosive materials out of the aforesaid two bags.

19. Then, all of them i.e accused Jagtar Singh Hawara, Paramjit Singh, Balwant Singh, Jagtar Singh Tara & Dilawar Singh went to H.No.243, Phase 7, Mohali of Jagrup Singh, where Jagtar Singh Hawara and Paramjeet Singh, kept the remote control devices and the remaining explosive materials.

20. On 26.8.1995, Jagtar Singh Hawara asked Paramjeet Singh to contact Dilawar Singh, (assassin), and get car No. DBA-9598 painted to 'off white' to give it a look of an official car. Gurmeet Singh,

Lakhwinder Singh and Dilawar Singh (assassin) and one other, took car No. DBA-9598, to shop No.24, Sector 7, Chandigarh of Surendra Sharma and delivered it for painting it 'off white'. Lakhwinder Singh paid advance of Rs.1500/- and they insisted that the car should be ready by 29.8.1995 or latest by 30.8.1995.

21. On 27th or 28th August, 1995, accused Lakhwinder Singh got the waist of a khaki colour pant loosened by Anil Kumar, tailor, for use by Dilawar Singh. Jagtar Singh Hawara after procuring the explosive materials and storing them in Nasib Singh's house at Village Jhingra Kalan and purchasing the car no. DBA 9598 and leaving it with Paramjit Singh and Jagtar Singh Tara at Delhi, went to Patiala again on 21st August, 1995 and met Balwant Singh. On 22.8.1995 Jagtar Singh Hawara and Balwant Singh brought some explosive material to Balwant Singh's house in Patiala.

22. Jagtar Singh Hawara and Balwant Singh got stitched two cloth belts for the purpose of making a belt bomb, from Stitch-Co Jeans, A.C. Market, Patiala. Delivery of one belt was taken on

25.8.1995 evening and that of the second one on 27.8.1995 evening.

23. Accused Jagtar Singh Hawara & Balwant Singh also purchased other materials required for preparation of the bomb including electric wires, battery, switch and ball bearings etc from Patiala. The explosive material that was brought on 22.8.1995 to Balwant Singh's house was filled in one of the cloth belts in Balwant Singh's house was filled in one of the cloth belts in Balwant Singh's house. Some ball bearings were also added to it.

24. On 28.8.1995 Balwant Singh, Dilawar Singh, Jagtar Singh Hawara, Gurmeet Singh and Lakhwinder Singh remade the belt bomb by adding some more explosive material and RDX and nuts/bolts into the cloth belt in the house of accused Gurmeet Singh at house NO.981, Phase.IV, SAS Nagar, Mohali during night hours. It was agreed that accused Dilawar Singh will wear the belt containing the explosives etc and will act as human bomb to kill Beant Singh.

25. On 29.8.1995, accused Jagtar Singh Hawara, Jagtar Singh Tara, Jagrup Singh and Paramjit Singh concealed the remote

control devices, explosives and wires etc in the cavity of the harmonium brought by Jagrup Singh. The aforesaid materials had been brought by the aforesaid accused persons to the house of Jagrup Singh on 25.8.1995. The said harmonium was kept in the house of Jagrup Singh. Further, the aforesaid accused concealed the remaining firearms and explosives in two tubes and a plastic cover. Thereafter Navjot Singh took the above material to his house at H.No.889, Phase 3-B-2 along with Jagtar Singh Hawara and Jagtar Singh Tara and concealed it there.

26. In the evening of 29.8.1995 accused Dilawar and Balwant Singh went to the shop of Surinder Sharma on the scooter of Lakhwinder Singh and they asked for the Car. But the car was not ready at that time. Surendra Sharma told them that the car would be delivered on the next day i.e 30.8.1995.

27. In the forenoon of 30.8.1995, accused Dilawar Singh and Balwant Singh again went to the shop of Surender Sharma on Scooter No.PCP-2085 belonging to accused Lakhwinder Singh for taking delivery of car no.DBA 9598. Since the car was not yet

ready, both of them waited there. Later, in the afternoon when the painting work was about to be complete, Balwant Singh left on the scooter and came back to the shop after sometime with Dalbir Singh @ Maula after collecting the Khaki pant from Lakhwinder Singh. The pant was taken out of the dickey of the scooter and handed over to Dilawar Singh. The Scooter was given to Maula. Dilawar Singh and Balwant Singh took delivery of the car and made the balance payment of Rs.1500/-.

28. On 30.8.1995 at about 3.00 p.m. accused Balwant Singh along with accused Dilawar Singh procured car no. DBA 9598, from Surendra Sharma after it had been painted "off-white". The said car was brought by them to the house of accused Gurmeet Singh at Mohali where Dilawar Singh strapped the belt bomb containing explosives on his body. Balwant Singh, Jagtar Singh Hawara and Dilawar Singh proceeded to accomplish the mission. Accused Jagtar Singh Tara also joined them on the way. Accused Jagtar Singh Hawara got down from the car on way and went to Chandigarh Bus Stand. When Balwant Singh, Dilawar Singh and Jagtar Singh Tara reached the Secretariat, they found that

S.Beant Singh had already left.

29. On the night of 30.8.1995, Dilawar Singh and Balwant Singh took car No. DBA 9598 to house No.3031/1 Sector 45, Chandigarh and stayed there for the night with Chamkaur Singh brother of Dilawar Singh.

30. On 31.8.1995 accused Jagtar Singh Tara and Dilawar Singh went to Punjab & Haryana Civil Secretariat in Car No.DBA 9598 and reached there at about 3.00 p.m.. Accused Balwant Singh followed them on his Scooter No. PB-11-1955. After sometime Jagtar Singh Tara left Secretariat leaving behind Balwant Singh and Dilawar Singh in the car.Both of them waited for the coming down of S.Beant Singh at the VIP Gate of the Secretariat. As soon as S.Beant Singh was about to sit in the car, the 'Human Bomb' approached him and caused explosion killing S.Beant Singh and others and also causing injuries to many. Accused Dilawar Singh also got exterminated in the process.

31. After the commission of the crime accused Balwant Singh and Jagtar Singh Hawara run away and stayed at various

places in India and remainedf in touch with each other. For some time they also stayed together with another accused Kuldip Singh @ Ram Singh.

493. As stated earlier, the entire case of the prosecution is based on circumstantial evidence and after considering the case put forward by the prosecution in consonance with the evidence, it comes out that the prosecution has relied upon the following main circumstances to prove its case as to the factum of conspiracy between all the accused persons and its execution.

1. The motive for commission of the crime as reiterated by accused Balwant Singh while confessing the crime.
2. Judicial confessions made by the accused Jagtar Singh Tara, Balwant Singh and Shamsheer Singh.
3. Extra judicial confessions made by the accused persons to different witnesses.
4. Recoveries of incriminating articles on disclosure statement made by some of the accused persons.
5. The act & conduct of the accused persons after commission of the crime.
6. Direct evidence of some witnesses as to the factum of conspiracy by the accused persons.

494. As per the law settled by the Hon'ble Apex Court, the moot question is, how to prove the meeting of mind and entering into conspiracy? For this one may refer to the judgment of Hon'ble Apex Court in case of **Kehar Singh Versus State (Delhi Administration) (supra)** known as **Indira Gandhi murder case**, in which the Hon'ble Apex Court held that the conspiracy can be proved by circumstantial evidence as well as by direct evidence and that though the conspiracy is hatched in secrecy, the prosecution must prove some physical manifestation of agreement although it may not be necessary to prove actual meeting of two persons or the words by which the two persons communicated. The Supreme Court further said that the evidence regarding transmission of thoughts and sharing of unlawful design may be sufficient.

495. Similarly in **Leela Dass Versus Union of India, 1999, Criminal Law Journal, page 1807**, the Hon'ble Calcutta High Court held that since the direct evidence to prove the conspiracy is rarely available, therefore, the circumstantial evidence must be clear and the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused.

496. Before taking the evidence of prosecution,

let us take a issue raised by learned defence counsel as to the applicability of Section 10 of the Evidence Act to the case in hand as he submitted that the entire evidence of the prosecution regarding judicial confessions made by some of the accused persons, extra judicial confessions made by the accused persons and the act and conduct of the accused persons after the commission of the crime, can not be considered for any purpose whatsoever either to prove the factum of conspiracy or its execution, as far as the accused other than who had allegedly suffered, by taking shelter of Section 10 of Evidence Act because Section 10 of the Evidence Act clearly says that once the conspiracy is terminated and ceased to exist, no evidence thereafter can be considered to apply the presumption of Section 10. While saying so, he has relied upon **Mirza Akbar Vs. King AIR 1940, Privy Council, page 176, Jayendra Saraswati Vs. State of Tamilnadu, 2005 (1) RCR, (Criminal), page 629** and **Bhawan Sarup and others Vs. State of Maharashtra, AIR 1965, Supreme Court, page 682.**

497. However, after considering the case law relied upon by both the parties on this aspect and after considering their rival contentions, it comes out that the plea raised by learned defence counsel is true to some extent but is not proper interpretation of Section 10 of the Evidence Act.

498. No doubt, as alleged by learned defence counsel, the interpretation of Section 10 of the Evidence Act was taken by the Hon'ble Apex Court directly in **Bhagwan Sarup's case (Supra)**, where while dealing with the nature of the evidence that should be adduced to sustain the case of conspiracy, the Hon'ble Apex Court held that the conspiracy may be proved by direct evidence or may be inferred from acts and conduct of the parties. There is no difference between the mode of proof of the offence of conspiracy and that of any other offence; it can be established by direct evidence or by circumstantial evidence but Section 10 of the Evidence Act introduces the doctrine of agency and if the conditions laid down therein are satisfied, the act done by one is admissible against the conspirator.

499. The Hon'ble Apex Court after reiterating the wordings of Section 10 of the Evidence Act, interpreted the same in the following words:-

"This section, as the opening words indicate, will come into play only when the Court is satisfied that there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, that is to say, there should be a prima facie evidence that a person was a party to the conspiracy before his acts can be used against his co-conspirators. Once

such a reasonable ground exists, anything said, done or written by one of the conspirators in reference to the common intention, after the said intention was entertained, is relevant against the others, not only for the purpose of proving the existence of the conspiracy but also for proving that the other person was a party to it. The evidentiary value of the said acts is limited by the circumstances, namely, that the acts shall be in reference to their common intention and in respect of a period after such intention was entertained by any one of them. The expression "in reference to their common intention" is very comprehensive and it appears to have been designedly used to give it a wider scope than the words "in furtherance of" in the English law; with the result, anything, said, done or written by a co-conspirator, after the conspiracy was formed, will be evidence against the other before he entered the field of conspiracy or after he left it. Another important limitation implicit in the language is indicated by the expressed scope of its relevancy. Anything so said, done or written is a relevant fact only "as against each of the persons believed to be so conspiring as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it. It can not be used in favour of the other party or for the purpose of showing that such a person was not a party to the conspiracy.

500. In short, the section can be analysed as follows:

- (1) There shall be a prima facie

evidence affording a reasonable ground for a Court to believe that two or more persons are members of a conspiracy;

- (2) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other;
- (3) anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them;
- (4) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it; and
- (5) it can only be used against a co-conspirator and not in his favour.

501. Actually, the above said principles were laid down by the Hon'ble Apex Court in **Sardar Sardul Singh Cavveshar Vs. State of Maharashtra, AIR, 1965, Supreme Court, page 682** and those were reiterated by the Hon'ble Apex Court in Bhagwan Swrup's case (Supra).

502. Not even this, these principles were

again reiterated by the Hon'ble Apex Court in **Kehar Singh Vs. State (Supra)** known as **Indira Gandhi murder case** where the Hon'ble Apex Court, in a case of similar facts & circumstances involving the dispute of conspiracy leading to the assassination of Indira Gandhi, then Prime Minister, again stated that:-

"it is well settled that act or action of one of the accused could not be used as evidence against the other. But an exception has been carved out in Section 10 in cases of conspiracy and once it is established that there is reasonable ground to believe that two or more persons have conspired together, in the light of the language of Section 120-A, the evidence of action or statements made by one of the accused, could be used as evidence against the other for the purpose of proving the existence of conspiracy as well as the fact that the other persons was a party to it."

503. Not even this, the plea raised by learned defence counsel has been answered by the Hon'ble Apex Court in **Sardul Singh's case (Supra)**, where decision of Privy Council in **Mirza Akbar's case (Supra)** has been referred to and the Hon'ble Apex Court settled that:-

"The limits of the admissibility of evidence in conspiracy case under Section 10 of the Evidence Act have been authoritatively laid down by the Privy Council in **Mirza Akbar Vs. King Emperor (Supra)**. In that case, their Lordships of

the Privy Council held that Section 10 of the Evidence Act must be construed in accordance with the principle that the thing done, written or spoken, was something done in carrying out the conspiracy and was receivable as a step in the proof of the conspiracy. They notice that evidence receivable under Section 10 of the Evidence Act of "anything said, done or written by any one of such persons: (i.e., conspirators) must be "in reference to their common intention."

504. Actually this plea has been raised by learned defence counsel to say that the confessions made by some of the accused persons after their arrest can not be taken into consideration even if the same are proved to be true and voluntarily made, against any other accused persons. Admittedly, the plea of learned defence counsel is legally tenable to this extent but as far as the plea that anything proved against a co-accused concerning his act and conduct in prosecution of conspiracy, can not be considered against the other accused under Section 10 of the Indian Evidence Act is concerned, it is not tenable.

505. Later on, in **State of Tamilnadu Vs. Nalini's case (Supra)**, which is known as **Rajiv Gandhi murder trial**, the Hon'ble Apex Court again considered this question and held that where it is prima facie proved that there was a criminal conspiracy between two or more persons then

anything said or done by any of conspirator become substantive evidence against the other, provided that should have been a statement in reference to their common intention. And the Hon'ble Apex Court answered the relevancy of a confession made by an accused after his arrest against the co-accused in the following words:-

"But the contention that any statement of a conspirator, whatever be the extent of time, would gain admissibility under Section 10 of it was made "in reference" to the common intention, is too board a proposition for acceptance. We can not overlook that the basic principle which underlies in Section 10 of the Evidence Act is the theory of agency. Every conspirator is an agent of his associate in carrying out the object of the conspiracy. Section 10, which is an exception to the general rule, while permitting the statement made by one conspirator to be admissible as against another conspirator restricts it to the statement made during the period when the agency subsisted. Once it is shown that a person became snapped out of the conspiracy, any statement made subsequent thereto can not be used as against the other conspirators under Section 10.

506. The Hon'ble Apex Court further held that whether a particular accused had ceased to be a conspirator or not, at any point of time, is a matter which can be decided only on the facts of that particular case. Normally a conspirator's connections with the conspiracy would get snapped

after he is nabbed by the Police and kept in their custody because he would thereby ceased to be the agent of other conspirators and as such a confession made by an accused can not be used as substantive evidence against the other accused on the principle enunciated in Section 10 of the Evidence Act. But it can be used only for the limited purpose of corroboration of the other evidence, although such a confession is admissible and reliable and can be used against a confessor as substantive evidence.

507. With the above discussed legal background, let us now take the main circumstances of the prosecution to bring home the factum of conspiracy between the accused facing trial in this case.

**Motive behind conspiracy, if any,
its proof and relevancy.**

508. First of all, let us take the existence of the motive, if any and its relevancy. Needless to say, the prosecution is not bound to prove the motive of offence in any criminal trial, in as much as motive is known only to the perpetrator of the crime and may not be known to the others. However, if the motive is alleged and proved by the prosecution, the court has to consider it and see whether it is adequate.

509. In this regard, the Hon'ble Apex Court in **Suresh Chandra Bahri and others Vs. State of Bihar, AIR, 1994, Supreme Court, Page 2420** held that sometimes motive plays an important role and becomes a compelling force to commit a crime and therefore motive behind the crime is a relevant factor for which evidence may be adduced. A motive is something which prompts a person to form an opinion or intention to do a certain illegal act or even a legal act but with illegal means with a view to achieve that intention. In a case where there is clear proof of motive for the commission of the crime it affords added support to the finding of the Court that the accused was guilty for the offence charged with. But the absence of proof of motive does not render the evidence bearing on the guilt of the accused nonetheless untrustworthy or unreliable because most often it is only the perpetrator of the crime alone who knows as to what circumstances prompted him to a certain course of action leading to the commission of the crime.

510. Accordingly in the present case, the motive behind this assassination as alleged by the prosecution is duly established on record from the confession of accused Balwant Singh, not made to the Police or a Magistrate but before this Court during the trial and after the completion of trial.

511. In this regard, as stated earlier, accused Balwant Singh from the very beginning of the trial admitted and confessed that he and deceased assassin Dilawar Singh had killed Beant Singh for the cause of independence of Khalistan and because of the fact that Beant Singh was killer of thousands of innocent Sikhs and started claiming himself as incarnation of Guru Gobind Singh. He also justified the killing with a theory that during the period of '**Dharam Yudh Morcha**' by the Sikh community for the religious and political demands of the Sikhs, the Govt of India, led by Congress, was not happy and with an intention to suppress the movement, the Govt of India in June, 1984 mounted an operation known as '**Blue Star Operation**', by which the armed force personnel entered the Golden Temple Complex at Amritsar and ravaged the same resulting into loss of life and property as well as damage to Akal Takht at Golden Temple and killed thousands of innocent persons.

512. And as per this accused, it has offended the religious feelings of Sikh community and resentment was expressed by every Sikh. Not even this, after the killing of Indira Gandhi, then Prime Minister of India, the Congress Govt indulged into riots in Delhi and killed so many innocent Sikh persons, who were having no connections with the murder and no action has been taken against the guilty.

513. He further claimed that after that the congress govt formed Govt in Punjab and made Beant Singh as Chief Minister despite the fact that the elections of 1992 were boycotted by almost all the political parties of the State. Beant Singh after becoming Chief Minister indulged into killing of thousands of innocent Sikhs in false encounters and their dead bodies were cremated as unclaimed and all this was done by him on the instigation of the congress govt at Delhi. Not even this, after that he started claiming himself to be an Ambassador of peace and compared himself with Guru Gobind Singh.

514. And because of this act & conduct of Beant Singh, they decided to kill him and he along with deceased Assassin Dilawar Singh killed him on 31.8.1995 and he being a member of 'Khalistan' Liberation Force will continue his movement for the liberation of khalistan.

515. Even accused Jagtar Singh Tara (since proclaimed offender) has also confessed this crime with the same theory and motive. The prosecution alleged that the main organization behind this conspiracy was Babbar Khalsa International, headed by accused Wadhawa Singh and Mahal Singh, who hatched this conspiracy in collusion with accused Jagtar Singh Hawara. Even this fact is also proved on the file in view of certain documentary

evidence.

516. No doubt, as submitted by learned defence counsel, even if we ignore the documents, Ex.P137 to Ex.P149, relating to the constitution and the activities of the Babbar Khalsa International, being not proved as per the requirements of the law and based on hear-say evidence, still, there is another set of facts, which proves that within hours of this assassination, Babbar Khalsa International had claimed the responsibility for killing the Beant Singh as per the motive put forward by accused Balwant Singh.

517. In this regard, PW-38, K.N.Prabhakar, of Hind Samachar Group of Papers and PW-35, P.Ganapati, who was working in the office of UNI, the premier news agency of India, have proved that within hours of the killing, they received fax messages, which are mark AAA, mark BBB, Mark CCC, mark DDD, mark FFF, with their photocopies and these documents, which have been proved to have been received by the news agencies, are clear proof to support the motive theory put forward by accused Balwant Singh and Jagtar Singh Tara.

518. Above all, PW-35, V.Ganapati categorically deposed that at about 11.30 p.m., on 31.8.1995, he was informed that a fax message has been received in the office of the UNI and he accordingly cleared

the fax message for distribution to all the subscribers. He further deposed that on 6.9.1995 another message, from Babbar Khalsa International was recovered on their fax machine and he further identified the original fax messages, mark AAA and mark BBB and stated that he handed over these messages to the CBI. Similarly, PW- 38, K.N.Prabhakar, Personal Assistant to the editor Hind Samachar, Group of News Papers, Jalandhar deposed that on 31.8.1995, he received fax messages mark DDD, mark EEE from Babbar Khalsa International claiming responsibility for the killing of Beant Singh. On 7.9.1995 he again received fax message mark FFF and all these fax messages were handed over to the CBI.

519. As far as the plea of learned defence counsel that the fax messages have not been verified from any source, is concerned, there is no force in this plea because it is alleged by the prosecution that these fax messages have been received from Pakistan and if it is so, there is no reciprocal arrangement between India and Pakistan to issue a letter of request, as per the provisions of Section 166-A of Cr.P.C, either to record the evidence of the concerned person or to call any witness to produce any such record to verify the source of fax messages or its authenticity. As such the investigating agency cannot be penalised for this handicap and as such this court has to rely

upon the testimony of PW-35 and PW-38 on this aspect specially when there is nothing on the file to disbelieve them.

520. No doubt both these witnesses could not identify the signatures of the persons, who signed these fax messages but the prosecution has examined PW-207, Harcharan Singh, a co-villager and known person of Wadhawa Singh and PW-209, Tara Singh, a co-villager of Mehal Singh and both these witnesses have categorically deposed that the fax messages, mark AAA, mark DDD, mark EEE and mark FFF, bear the signatures of Wadhawa Singh and Mehal Singh and they identify their signatures.

521. As per PW-207, Wadhawa Singh, who belongs to his Village and who studied with him in the School and was also known to him, being a member of Co-operative Society of the Village and he can identify the hand writing and signatures of Wadhawa Singh and he accordingly identified the signatures of Wadhawa Singh on the fax messages. Similarly, PW-209 has also identified the signatures of Mehal Singh on these fax messages. Not even this, PW-207 has also identified the photographs of Wadhawa Singh on the poster, Ex.P150, which has been relied upon by the prosecution with a limited purpose of showing the factum of conspiracy by accused Wadhawa Singh and Mehal Singh while sitting in Pakistan.

522. The testimony of both these witnesses have been challenged by the learned defence counsel on the plea that after a long gap of 10 to 15 years, no body can identify the signature and hand writing and in this case both PW-207 and PW-209 stated that they have seen the hand writing of accused Wadhawa Singh and Mehal Singh, way back about more than 15 years, specially when they have no direct association with the said persons. However, there is no force in this plea because there is nothing on the record to say that both these witnesses have not seen accused Wadhawa Singh and Mehal Singh while writing or signing the documents or they were having any motive to depose so.

523. At the same time, no suggestion was put to both these witnesses that they never know accused Wadhawa Singh and Mehal Singh and they have never seen them while writing and signing the documents. In **State of HP Vs. Thakur Dass, 1982 Criminal Law Journal, page 1694**, the Hon'ble Himachal Pradesh High Court, reiterated the well settled principle of law that when a statement made by a witness on oath relating to some facts has not been challenged in cross examination, the fact in question must be held to be not disputed. Similar are the facts in hand and as such the testimony of PW-207 and PW-208 remained unrebutted as far as the identity of the signatures of accused Wadhawa Singh and Mehal Singh

are concerned.

524. No doubt, as stated earlier the authenticity of documents, Ex.P-137 to Ex.P-149, is not established as per the law, as PW-100, Dilbagh Singh, who had brought these documents admitted that he does not know the source of these documents and all these documents are the photocopies collected by him from different sources. If it is so, these documents are based on hear-say and not authenticated and admissible in evidence.

525. However, in view of the evidence of PW-207 and PW-209, coupled with the statement of PW-35 and PW-38, it is proved on record that certainly, the Babbar Khalsa International, has taken the responsibility for the killing of deceased Beant Singh and this fact further shows that Babbar Khalsa International was also a perpetrator of the conspiracy to kill Beant Singh. And accused Wadhawa Singh and Mehal Singh were actively associated with this conspiracy to fulfill the motive for which this conspiracy was hatched. And lastly accused Balwant Singh along with accused assassin Dilawar Singh, were also having a motive to kill Beant Singh, may be under a bonafide belief that by killing Beant Singh, they may gain their religious goal. Needless to say the crime charged is not simply the murdering a human being, but it is the crime of assassination of a duly elected Chief

Minister of a State. No doubt, the motive for the crime was not personal and as such it can be perpetuated only under such a motivated religious goal, by playing with sentiments of vulnerable persons like accused Balwant Singh and Dilawar Singh, who even forget that this act is going to kill some innocent persons also and so happens in this case.

526. Even otherwise, as stated earlier under this point, the only relevant question is whether the remaining accused persons of this trial, except accused Balwant Singh and assassin Dilawar Singh, were also the conspirators in this conspiracy and they did different acts to achieve their objective as planned i.e to kill Beant Singh.

527. As discussed earlier, it is proved on the file that Babbar Khalsa International has perpetuated this crime either directly or indirectly. No doubt, as argued by learned defence counsels, the story of the prosecution that the conspiracy of this crime was initiated in Pakistan by accused Wadhawa Singh and Mehal Singh, has not been substantiated during the trial, as none of the prosecution witnesses could say anything or to show any evidence to show that this conspiracy was initially initiated in Pakistan. At the same time we cannot overlook the fact with the kind of bilateral relations between India and Pakistan, the

possibility of support of our neighbour to create unrest in India cannot be ruled out.

528. At the same time, it is submitted by the learned defence counsel, the conspiracy, if any, was initiated by the absconding accused Harjit Singh, Manjinder Singh @ Baba Ji and Resham Singh, who are settled in U.S.A, Germany and Norway. And this plea shows that there was a conspiracy on the international level to kill Beant Singh. As such it is held that accused Wadhawa Singh and Mehal Singh are the conspirators of this conspiracy and they initiated the conspiracy, while sitting in Pakistan.

529. No doubt, as submitted by learned defence counsels, the prosecution has also failed to prove that Babbar Khalsa International is banned organization, as per the provisions of Unlawful Activities Prevention Act, 1967, as no order of the Tribunal competent under this Act, to declare this organization as anti India and Terrorist Organization has been brought on record. However, this aspect has not much importance or relevancy as far as the factum of conspiracy is concerned because as stated earlier this crime is not possible except with a planned conspiracy.

Recovery of car No. DBA-9598 near the place of blast and its link with the

case and the accused persons.

530. As per the story of prosecution, when scene of crime was inspected, Car No. DBA-9598, exhibited as material article, Ex.P76, was recovered and it was used by the accused persons to enter the Secretariat posing the same to be an official car, and ultimately all knots of genesis of occurrence were untied and leads the police to unearth the entire conspiracy including the role of accused persons. If it is so, the first question comes under what circumstances, this car was recovered from the spot and how it is linked with the commission of crime and then with the accused persons.

531. To know the above query, let us take the statement of PW-240, Inspector Nanha Ram, who was the first Investigating Officer of the Chandigarh Police, who conducted the investigations, till it was taken over by the CBI and accordingly, when he stepped into the witness box, he deposed that after reaching at the spot of Bomb Blast, he took a cursory look of the entire scene of crime and started immediate remedial steps for sending the injured to the Hospitals to save them and then he extricated the dead bodies and conducted a detailed inspection.

532. He further deposed that during his

inspection, he found that an Ambassador Car bearing registration No. DBA-9598, Ex.P-76, was lying abandoned in the parking area towards the Haryana Secretariat and on inspection, he found that the car was painted afresh, as it was still not dried and this leads to a suspicion that this car might have been used in the crime and ultimately he took into possession that car after conducting the search of the same as per the seizure memo, Ex.PW177/6. Similarly on search, all the documents and the articles recovered from the car were taken into possession as per the seizure memo, Ex.PW177/7 and it includes the registration certificate of the car, Insurance Cover Note along with other documents, one slip, Ex.PW60/A, which was later on found to be containing the couplet written by accused Balwant Singh, when accused Dilawar Singh was about to hit the target and a 9 volt battery.

533. As far as the recovery of the car from the spot is concerned, this aspect is not seriously contested by the defence counsels but it was alleged that even if it is presumed that this car was recovered from the spot, there is no cogent evidence on the file to link it with the blast and to prove that it was inspected on 1.9.1995 by PW-178, in the presence of PW-241, Surinder Pal, DSP, CBI and the alleged chance prints were lifted from it and then compared and found to be of accused Lakhwinder Singh and Balwant Singh, as the reports

of the experts in this regard are not admissible in evidence.

534. Even otherwise, there is sufficient evidence on the file, which proves that as stated by PW-240, the car, Ex.P76 was found abandoned near the scene of crime and it was taken into possession by PW-240 as per the memo, Ex.P-177/6, along with the bunch of keys, Article P-204. During his cross examination, he has categorically stated that he touched the body of the car and came to know that it is freshly painted as the paint was not still dried which forced him think that it has some connection with the blast.

535. At the same time, the prosecution has placed on the file two photographs of this car, Ex.PW-119/69 and 70, which were duly identified by PW-51, Surinder Kumar painter, who has repainted it into white colour, as well as PW-50, Tarlok Nath painter, who had painted the number plates of this car mark QQQ and PPP. PW-119, who has proved the taking of photographs, has not been cross examined on this aspect, which further shows that the recovery of the car is duly established on record and there is nothing to disbelieve the same.

536. Once, the recovery of the car, Ex.P-76 from the spot is proved, let us come to the next aspect as to the inspection of this car by the

experts. To decide the controversy as to the inspection of the car, the testimony of PW-178, S.K.Chadha, Senior Scientific Officer of the CFSL, is very material. This witness is an expert of Finger Print Examination, having experience of 18 years in this field.

537. When he (PW-178) stepped into the witness box, he deposed that as per the directions of the CBI authorities, he inspected the scene of crime as well as the car, Ex.P-76, as per memo Ex.PW-178/1, which was prepared by DSP, Surinder Pal Singh. He categorically deposed that Shri Gautam Ram, photographer of CFSL took the photographs of all the available Chance Finger prints on the car, from various angles under his supervision from all available sources on Car and a memo, Ex.PW-178/2 was prepared in this regard.

538. He further deposed that the rear view mirror of the car was removed and taken into possession for examination in the lab and thereafter, after receiving the specimen finger prints of all the accused persons of this case, he compared the same with the chance finger prints lifted from the car and rear view mirror and examined the same and as per his report Ex.PW-178/5 along with the annexures, Ex.PW-178/6 and Ex.PW-178/7, he found that one of the chance finger prints, mark Q-4 developed and photographed from

rear view mirror of the car is identical with the specimen left thumb impression of accused Lakhwinder Singh marked as LTS-24. He has also identified the rear view mirror as article, P-155.

539. He further deposed that on 16.1.1996 he took the specimen finger prints of accused Balwant Singh on six sheets, Ex.PW-178/8 to Ex.PW-178/13, in the Office of CBI, New Delhi and he also identified accused Balwant Singh in the court and deposed that after enlarging the photographs of the specimen and the chance finger prints, one of the chance finger print Q-15 was found to be identical with the specimen finger print of Balwant Singh as per his report Ex.PW-178/14 coupled with the reasons Ex.PW-178/16.

540. The learned defence counsel while challenging the factum of inspection by this witness alleged that there is a cutting on the memo Ex.PW178/1, which shows that the digit 12 has been changed from the original digit 10 and this interpolation has been made just to wriggle out from the fact that the investigations were taken over by the CBI only on 1.9.1995 after 12.00 noon.

541. However, after considering the rival contentions of both the parties on this aspect, it comes out that this plea has no relevancy because as stated earlier even if it is presumed that this

witness has examined the car even before taking over the investigation by the CBI, it makes no difference. At the same time, the Govt of Punjab has ordered the CBI investigations on the evening of 31.8.1995 itself. At the same time, PW-241, DSP Surinder Pal has also deposed that the Car was inspected in the Police Station, North, in the presence of PW-178 and the proceedings were completed by 2.30 p.m.

542. The other plea of learned defence counsel is that PW-248, Mr.S.K.Saxena, Chief Investigating Officer has admitted that he came to know about the existence of Car only after 12.30 p.m and if it was so, there was no question of asking Surinder Pal, DSP or Mr.S.K.Chadha to inspect the same and this shows that the entire story of inspection is fabricated specially when no DDR has been recorded in Police Station regarding the visit of the Expert and the DSP, as admitted by PW-240 and as required under the rules and this aspect also falsify the inspection report.

543. However, after going through the testimony of this witness and other witnesses, it comes out that this plea of learned defence counsel is totally misconceived as PW-248 has never admitted that DSP Surinder Pal inspected the Car on his direction. On the contrary, PW-241, Surinder Pal, DSP has categorically stated that he inspected the

Car as per the directions of the Superior Officers and even S.N.Saxena was not the Chief Investigating Officer at that time.

544. It is categorically stated by PW-240, Nanha Ram, SHO that after taking the car into possession, he took it to the Police Station, North and kept it there. It is also proved that when the investigations of this case were taken over by the CBI, this car was inspected on 1.9.1995 and thereafter it remained parked in Police Station North itself. Since this car was never removed from the Police Station, as such there was no need to make any entries in register no.19 known as malkhana register. Even, the CBI officials were not obliged to make the entries in the Police Station as to their inspection as this aspect was having no concerned with the working of the Police Station, once the investigations were taken over by the CBI.

545. The next plea of learned defence counsel is that the presence of PW-190, ASI Ranjit Singh during the inspection proceedings stands belied from the copy of DDR no.12 dated 1.9.1995 vide which, he left the Police Station at 1.15 p.m., and reached back at 8.25 p.m., as is recorded in DDR no.25 of the same day. Thus, his presence during the inspection from 12.00 noon to 2.30 p.m. is highly doubtful. However, this plea is also baseless because even if it is presumed that ASI

Ranjit Singh left the Police Station and worst to worst, he was not present till the completion of the inspection proceedings, it makes no difference because the only role of ASI Ranjit Singh was to help the CBI officials, if required during the inspection.

546. Even ASI Ranjit Singh was not cross examined by the learned defence counsel on this aspect and as to how his signatures are on the inspection memo. It is also possible that although the entry was made in the DDR but he actually did not leave the Police Station till inspection was completed specially when he has to leave the Police station for patrolling purpose only.

547. Similarly, the plea of learned defence counsel that PW-165 admitted that Shri S.K.Chadha remained at the spot throughout the day of 1.9.1995 and thus not visited the Police Station is also misconceived as PW-165 has also clarified that although he remained at the spot throughout the day but he can not tell whether the other experts also remained there or gone else where.

548. One more related argument as to the search of the Car, Ex.P76 put forward by the defence counsel was that it is admitted case of PW-240, Nanha Ram that various telephone numbers of Delhi and Jaipur written on piece of paper and some

cash memos of petrol, a parking slip, were also recovered from the car but no verification or investigations have been made by the Police in this regard. However, this plea is also misconceived because admittedly all these papers were of the month of February, 1995 or prior to that, when the factum of conspiracy of this case was not even conceived specially, when this car was sold to the accused persons only on 20.8.1995. Similarly, the non-examination of the sample of soil etc. taken from the car has also no bearing on the merits of the case.

549. Thus, there is nothing on the file to disbelieve the recovery of the car, Ex.P-76 from the scene of the crime and its inspection by PW-178 and PW-241 and taking of the chance finger prints. As far as the evidentiary value of the finger print reports is concerned, it will be considered while discussing the case of accused persons individually.

550. As far as the link of this car with the accused persons and leading to unearth of the conspiracy is concerned, as per the prosecution after the recovery of the car from the spot and its inspection and in view of the testimony of PW-99, Chamkaur Singh, it was found that deceased Dilawar Singh had caused this bomb blast by working as suicide bomber and later on PW-51, Surinder Sharma,

painter, disclosed that he had re-painted the Car, Ex.P76 on the asking of accused Lakhwinder Singh, who was already known to him and he also named accused Gurmeet Singh, Dilawar Singh and Balwant Singh as the persons, who used to visit him in connection with the re-painting of the car and also named PW-114, Dalbir Singh @ Maulla, who once come with the accused persons to his shop.

551. Thereafter accused Lakhwinder Singh and Gurmeet Singh were arrested and the entire conspiracy was unearthed and led to the arrest of remaining accused persons, which ultimately leads to know all the facts and circumstances of the conspiracy till its execution, as set out above in the confessions of the three accused persons. Accordingly, during the investigation, the CBI investigated all those aspects and collected evidence to prove the role of each and every accused persons, performed by them for the due execution of the conspiracy.

552. It is already held while, taking the motive theory that initially the conspiracy of this case was hatched by accused Wadhawa Singh and Mehal Singh, with the help of accused Jagtar Singh Hawara and it is alleged by the prosecution that accused Jagtar Singh Hawara came in contact with accused Balwant Singh, with the intervention of accused Harjit Singh @ Mini Bawa and they planned to kill Beant Singh with the help of a human bomb and

thereafter they executed this plan as per the details, mentioned above, after joining other accused persons and various inputs.

553. Keeping into consideration the above background, let us scan the evidence of the prosecution further, to know how the conspiracy was actually initiated and who were the planners of this conspiracy. To know this fact, as mentioned earlier, there can not be any direct evidence. On the other hand, we have to consider the evidence of the prosecution cumulatively. Accordingly, a resume of the evidence of the prosecution shows that the prosecution has relied upon the confessions of accused Balwant Singh, Shamsher Singh and Jagtar Singh Tara; and the extra judicial confessions made by some of the accused persons including accused Lakhwinder Singh, Balwant Singh, Gurmeet Singh, Shamsher Singh and Jagtar Singh Hawara before different witnesses; the act and conduct of the accused persons prior to and after the commission of this crime including the evidence showing preparations made by the accused for success of conspiracy and discovery of all those places and their identification; and other circumstantial evidence gathered from the spot and different witnesses, who saw different accused persons at the scene of crime before the crime or after the crime when they tried to evade arrest; to bring home the factum of conspiracy.

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Confessions of accused Balwant Singh, Jagtar Singh Tara and Shamsher Singh; making of the same and its relevancy to the conspiracy specially in reference to Section 10 and 30 of the Indian Evidence Act.

554. As far as the confessions are concerned, first of all, let us take the confession of accused Balwant Singh, Ex.PW65/F, which was recorded by PW-65. However, as held above, this accused has admitted and confessed the killing of Beant Singh with the help of deceased accused Dilawar Singh but he alleged that he never made any confession regarding the factum of conspiracy and how it was executed as alleged by the prosecution. In this regard on 20.2.1996, he moved an application retracting from his confession, Ex.PW65/F alleging that his alleged confession is false and never made by him. As such, let us decide this controversy to know, whether the offence committed by accused Balwant Singh and his co-accused Dilawar Singh was in the manner and as per the conspiracy pointed out by him in his confession, Ex.PW65/F.

555. The second confession relied upon by the prosecution is the confession of accused Jagtar Singh Tara since proclaimed offender. It will be apposite to mention over here that after filing of

the charge sheet, accused Jagtar Singh Tara along with remaining accused persons, was charge sheeted and the trial was started against him along with other accused persons and some evidence was also recorded including the statement of PW-86, Balbir Singh, then Special Judicial Magistrate, CBI, Patiala. However, after recording of some evidence, this accused escaped from the Jail and could not be arrested so far and ultimately, he was declared as proclaimed offender.

556. Learned defence counsel submitted that as per the law laid down in **State of Tamilnadu Vs. Nalini etc, AIR 1999, Supreme Court, page 2640**, as reiterated by the Hon'ble Apex Court in **Ishar Singh Vs. State of Andhra Pradesh, AIR, 2004, Supreme Court, page 3030**, the confession of this accused can not be considered for any purpose whatsoever as far as the present trial is concerned, either to decide the role of accused Jagtar Singh Tara or the role of the remaining accused persons, even under the provision of Section 10 of the Evidence Act because this accused is no more an accused facing trial in this case and if it is so, his confessional statement can not be considered for any purpose whatsoever as per the law laid down in the above mentioned cases.

557. However, this question was replied by the learned Public Prosecutor, saying that the point

raised by learned defence counsels is not tenable in the present trial because the point in question was decided by the Hon'ble Apex Court while deciding the cases under the provisions of TADA Act and under the provisions of Section 15(1) of the TADA Act, 1987, because Section 15 sub-section (1) provides that confessions of the maker can be considered against the co-accused or the abettor and conspirator only if both the accused making the confession and co-accused facing trial in the same trial. Whereas, this point is irrelevant where the case is otherwise tried and this question was also considered in **State of Tamilnadu Vs. Nalini's case** known as Rajiv Gandhi murder trial, where the Hon'ble Apex Court held that the joint trial of the maker of the confession and the co-accused/co-conspirator is a pre-condition to invoke the presumption available under Section 15 (1) of the TADA Act. But in other cases, the provisions of Section 30 read with section 10 will apply to rely upon the confession of an accused against the co-accused.

558. Accordingly after considering the rival contention of both the parties on this aspect, it comes out that the plea raised by learned defence counsel is not tenable as stated by learned Public Prosecutor. After going through the principle laid down by the Hon'ble Apex Court in both the authorities relied upon, it comes out that this

principle was laid down only for those cases where the confession of the accused is as per the provisions of Section 15 of the TADA Act and not otherwise.

559. In **State of Tamilnadu Vs. Nalini's case Supra**, the Hon'ble Apex Court, while considering this aspect, held that Section 10 of the Evidence Act is a special provision in order to deal with dangerous combination. Normal rule of evidence that prevents the statement of one accused being used against another u/s 30 of the Evidence Act, does not apply in the trial of conspiracy in view of Section 10 of the Act. The Hon'ble Apex Court further held that there is difference between Section 30 of Indian Evidence Act and Section 15(1) of TADA Act and the main difference pointed out by learned Apex Court is that in case under Section 15(1) of the TADA Act, the maker of the confession and the other accused should be tried jointly for the same offence as is clear from the word 'charged' & 'tried' together used in this section, whereas in case of Section 30 of the Indian Evidence Act, it is not required that the joint trial should be for the same offence.

560. Even in **Haroon Haji Abdullah Vs. State of Maharashta AIR 1988 S.C. 832**, the Hon'ble Apex Court while taking the confession of an accused, who had died during the trial, against the other

accused persons, held that no doubt the confession of a person, who is dead is not admissible in evidence under section 30 which insists upon a joint trial but such a statement becomes relevant under section 30 read with section 32 (3) of the Evidence Act. Similarly in the present case, accused Jagtar Singh Tara is declared as proclaimed offender as his whereabouts are not traceable and as such his confession is on the footing as a confession of a person who is not available specially when he was charge sheeted along with other co-accused and faced trial for sufficient long time and even the evidence regarding making of confession by this accused in the form of testimony of PW-86, was recorded in his presence and an opportunity of cross examination was granted.

561. At the same time, Section 30 of the Evidence Act gives a discretion to the court to take into consideration the confession against the maker as well as against the co-accused. Whereas u/s 15(1) of the TADA Act, the confession of the accused recorded thereunder shall be admissible in the trial of the maker of the confession as well as against the co-accused, provided the co-accused, abettor or conspirator, if charged and tried with the accused for the same case. Although, both the provisions required joint trial of the accused making confession and the co-accused. Thus the plea of learned defence counsel to exclude the

confession of Jagtar Singh Tara is not tenable.

562. Similarly in the present case, the accused Jagtar Singh Tara was charge sheeted along with remaining accused persons and he was charged and tried together and even if he has been absconded and declared a proclaimed offender, his confession can be considered for assessing his role in the conspiracy as well as the role of the remaining accused persons as per the provisions of Section 30 and Section 10 of the Indian Evidence Act. As such let us consider the confession of accused Jagtar Singh Tara and its legality and admissibility.

563. The third confession relied upon by the prosecution is the confession of accused Shamsher Singh as proved by PW-103, Dinesh Kumar Sharma, then Metropolitan Magistrate, Patiala House Courts, New Delhi. Although the learned defence counsel has raised two technical objections regarding recording of confession of accused Shamsher Singh after filing of the first charge sheet and during the pendency of the trial against him but this aspect will be considered while taking the case of accused Shamsher Singh individually. At present, we are concerned only with the aspect as to whether the confession made by the accused Shamsher Singh is true and voluntarily made as per the requirements of the law and the guidelines laid down by the Hon'ble Apex Court in different cases relied upon

by both the parties.

564. Before taking the evidence of the prosecution on this point, let us consider the legal position on the point of proof of confession, its relevancy and admissibility against the maker of the same and against the co-accused persons as per the provisions of Section 30 of the Indian Evidence Act read with Section 10 of the Indian Evidence Act.

565. Before we turn our attention to the more specific aspects of confessions, we should have a conspectus of the law on the evidentiary value of confessions, which are retracted, which is a general feature in our country and elsewhere. This question was also considered by the Hon'ble Apex Court in **State Vs. Navjot Sandhu** and the Hon'ble Apex Court held that:

"Under the general law of the land as reflected in the Indian Evidence Act, no confession made to a police officer can be proved against an accused. 'Confessions - which is a terminology used in criminal law is a species of 'admissions' as defined in Section 17 of the Indian Evidence Act. An admission is a statement - oral or documentary which enables the court to draw an inference as to any fact in issue or relevant fact. It is trite to say that every confession must necessarily be an admission, but, every admission does not necessarily amount to a confession. While Sections 17 to 23 deal with

admissions, the law as to confessions is embodied in Sections 24 to 30 of the Evidence Act. Section 25 bars proof of a confession made to a police officer. Section 26 goes a step further and prohibits proof of confession made by any person while he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate. Section 24 lays down the obvious rule that a confession made under any inducement, threat or promise becomes irrelevant in a criminal proceeding. Such inducement, threat or promise need not be proved to the hilt. If it appears to the court that the making of the confession was caused by any inducement, threat or promise proceeding from a person in authority, the confession is liable to be excluded from evidence. The expression appears connotes that the court need not go to the extent of holding that the threat etc has in fact been proved. If the facts and circumstances emerging from the evidence adduced make it reasonably probable that the confession could be the result of threat, inducement or pressure, the court will refrain from acting on such confession, even if it be a confession made to a Magistrate or a person other than police officer. Confessions leading to discovery of fact which is dealt with under Section 27 is an exception to the rule of exclusion of confession made by an accused in the custody of a Police Officer. Consideration of a proved confession affecting the person making it as well as the co-accused is provided for by Section 30. Briefly and broadly, this is the scheme of the law of evidence vis a vis confessions. The allied provision which needs to be noticed at this juncture is Section 162 of the Cr.P.C. It prohibits the use of any statement made by any person to a police officer in the course

of investigation for any purpose at any enquiry or trial in respect of any offence under investigation. However, it can be used to a limited extent to contradict a witness as provided for by Section 145 of the Evidence Act. Sub Section (2) of Section 162 makes it explicit that the embargo laid down in the Section shall not be deemed to apply to any statement falling within clause (1) of Section 32 or to affect the provisions of Section 27 of the Evidence Act.

566. In the Privy Council decision of **P.Narayana Swami Vs. Emperor (AIR 1939 PC 47)** Lord **Atin** elucidated the meaning and purport of the expression 'confession' in the following words:

"A confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact is not of itself a confession.

Confessions are considered highly reliable because no rational person would make admission against his interest unless prompted by his conscience to tell the truth. "Deliberate and voluntary confessions of guilt. If clearly proved are among the most effectual proofs in law". (Vide Taylor's Treatise on the Law of Evidence Col.I). However before acting upon a confession the court must be satisfied that it was freely and voluntarily made. A confession by hope or promise of advantage, reward or immunity or by force or by fear induced by violence or threats of violence can not constitute

evidence against the maker of confession. The confession should have been made with full knowledge of the nature and consequences of the confession. If any reasonable doubt is entertained by the court that these ingredients are not satisfied, the court should eschew the confession from consideration. So also the authority recording the confession be it a Magistrate or some other statutory functionary at the pre-trial stage, must address himself to the issue whether the accused has come forward to make the confession in an atmosphere free from fear, duress or hope of some advantage or reward induced by the persons in authority. Recognizing the stark reality of the accused being enveloped in a state of fear and panic, anxiety and despair while in police custody, the Indian Evidence Act has excluded the admissibility of a confession made to the police officer.

Section 164 of Cr.P.C is a salutary provision which lays down certain precautionary rules to be followed by the Magistrate recording a confession so as to ensure the voluntariness of the confession and the accused being placed in a situation free from threat or influence of the police."

567. As to what should be the legal approach of the Court called upon to convict a person primarily in the light of the confession or a retracted confession has been succinctly summarized in **Bharat Vs.State of UP (1971) (3) SCC 950**), where it was observed thus:

"Confessions can be acted upon if the court is satisfied that they are voluntary and that they are true. The voluntary nature of the confession depends upon whether there was any threat, inducement or promise and its truth is judged in the context of the entire prosecution case. The confession must fit into the proved facts and not run counter to them. When the voluntary character of the confession and its truth are accepted, it is safe to rely on it. Indeed a confession, if it is voluntary and true and not made under any inducement or threat or promise, is the most patent piece of evidence against the maker. Retracted confession, however stands on a slightly different footing. As the Privy Council once stated, in India it is the rule to find a confession and to find it retracted later. A court may take into account the retracted confession, but it must look for the reasons for the making of the confession as well as for its retraction, and must weigh the two to determine whether the retraction affects the voluntary nature of the confession or not. If the court is satisfied that it was retracted because of an after thought or advice, the retraction may not weigh with the court if the general facts proved in the case and the tenor of the confession as made and the circumstances of its making and withdrawal warrant its use. All the same, the courts do not act upon the retracted confession without finding assurance from some other sources as to the guilt of the accused. Therefore, it can be stated that a true confession made voluntarily may be acted upon with slight evidence to corroborate it, but a retracted confession requires the general assurance that the retraction was an after thought and that the earlier statement was true. This was laid down by the Hon'ble Apex Court in an earlier case reported in

Subramania Gopuinden Vs. The State of Madras (1958 SCR 428). "

568. Similarly the Hon'ble Apex Court in **Haroom Hazi Abdulla Vs. State of Maharashtra (1968 (2))**, reiterated that:-

"confession must be looked upon with greater concern unless the reasons given for having made it in the first instance are on the face of them false. "There was a further observation in the same paragraph that retracted confession is a weak link against the maker and more so against a co-accused. With great respect to the eminent Judge, the "weak link against the maker" goes counter must be viewed in the context of the fact that the Court was concentrating on the confession of the co-accused rather than the evidentiary value of the retracted confession against the maker."

569. Dealing with retracted confession, a four-Judges Bench of the Hon'ble Apex Court, in **Pyare Lal Vs. State of Assam (AIR 1957 SC 216)**, clarified the legal position thus:

"A retracted confession may form the legal basis of a conviction if the court is satisfied that it was true and was voluntarily made. But it has been held that a court shall not base a conviction on such a confession without corroboration. It is not a rule of law, but is only rule of prudence. It can not even be laid down as an inflexible rule of practice or prudence that under no circumstances such a conviction can be

made without corroboration, for a court may, in a particular case, be convicted of the absolute truth of a confession and prepared to act upon it without corroboration; but it may be laid down as a general rule of practice that it is unsafe to rely upon a confession, much less on a retracted confession, unless the court is satisfied that the retracted confession is true and voluntarily made and has been corroborated in material particulars."

570. As to the extent of corroboration required, it was observed in **Subramania Gounden's case (1958 SCR 428)** that each and every circumstance mentioned in the retracted confession regarding the complicity of the maker need not be separately and independently corroborated. The Hon'ble Apex Court held that:

"It would be sufficient in our opinion that the general trend of the confession is substantiated by some evidence which would tally with what is contained in the confession."

571. Then we have the case of **Shankaria Vs. State of Rajasthan (1978 (3) SCC 435)** decided by a three Judges Bench. And the Hon'ble Supreme Court settled the twin tests to be applied to evaluate a confession and held as follows:

1. Whether the confession was perfectly voluntary and

2. If so, whether it is true and trustworthy. The test is not satisfied the question of applying the second test does not arise. Then the Court indicated one broad method by which a confession can be evaluated.

And it was said:

"Satisfaction of the first test is a sine qua non for its admissibility in evidence. If the confession appears to the Court to have been caused by any inducement, threat or promise such as is mentioned in Section 24, Evidence Act, it must be excluded and rejected *brevi manu*. In such a case, the question of proceeding further to apply the second test, does not arise. If the first test is satisfied, the Court must, before acting upon the confession reach the finding that what is stated therein is true and reliable. For judging the reliability of such a confession, or for that matter of any substantive piece of evidence, there is no rigid canon of universal application. Even so, one broad method which may be useful in most cases for evaluating a confession may be indicated. The Court should carefully examine for confession and compare it with the rest of the evidence, in the light of the surrounding circumstances and probabilities of the case. If on such examination and comparison, the confession appears to be a probable catalogue of events and naturally fits in with the rest of the evidence and the surrounding circumstances, it may be taken to have satisfied the second test."

572. Similarly as to the interval which the

court should give to an accused to think over before making a confession is concerned, the Hon'ble Apex Court in **Shankaria's case (Supra)** further held that:

"there is no statutory provision in Section 164, Cr.P.C or elsewhere, or to an executive direction issued by the Court, that there should be an interval of 24 hours or more between the preliminary questioning of the accused and the recording of his confession. The condition precedent for recording a confession by the Magistrate in the course of Police investigation is that the Magistrate should not record any confession unless upon questioning the accused person making it, he has reason to believe that it is being made voluntarily. How much time for reflection should be allowed to an accused person before recording his confession, is a question which depends on the circumstances of each case. The object of giving such time for reflection to the accused, is to ensure that he is completely free from Police influence. If immediately before the recording of the confession, the accused was in judicial custody beyond the reason of the investigating police for some days then such custody from its very nature may itself be a factor dispelling fear or influence of the police from the mind of the accused. In such a case, it may not be necessary to send back the accused person for any prolonged period to jail or judicial lock-up."

573. The above mentioned principle was also settled by the Hon'ble Apex Court in **Sarwan Singh Vs. State of Punjab, AIR 1957, Supreme Court, page**

637 wherein the Hon'ble Apex Court held that

"It would naturally be difficult to lay down any hard and fast rule as to the time which should be allowed to an accused person in any given case before recording his confession under Section 164. However, speaking generally, it would be reasonable to insist upon giving an accused person at least 24 hours to decide whether or not he should make a confession. Where there may be reason to suspect that the accused has been persuaded or coerced to make a confession, even longer period may have to be given to him before his statement is recorded."

574. Similarly as to the admissibility of retracted confession and its effect is concerned the Hon'ble Apex Court held that:

"Where the accused, while retracting his confession, did not say that he was tutored by police to make the confession but only said that he made it under compulsion and threat and was false and a perusal of the confessional statement would show that prima facie there was nothing improbable or unbelievable in it; that it appeared to be a spontaneous account, studded with such vivid details about the manner of the commission of the crimes in question, which only the perpetrator of the crimes could know, and the confession received assurance in several material particulars from reliable independent evidence, mainly of circumstantial character, held the confession, coupled with the other evidence on the record, had unerringly

and indubitably brought home the charges to the accused."

575. Even in **Paramanand Pegu Vs. State of Assam (2004 (7) SCC 779)**, an authority relied by by learned defence counsel, the Hon'ble Apex Court, while advertng to the expression "corroboration of material particulars" used in **Pyare Lal Bhargava's** case clarified the position thus

"By the use of the expression 'corroboration of material particulars' the Court has not laid down any proposition contrary to what has been clarified in **Subramania Goundan** case as regards the extent of corroboration required. The above expression does not imply that there should be meticulous examination of the entire material particulars. It is enough that there is broad corroboration in conformity with the general trend of the confession, as pointed out in **Subramania Goundan** case."

576. The analysis of the legal position in paragraphs 18 & 19 is also worth noting:

"Having thus reached a finding as to the voluntary nature of a confession, the truth of the confession should then be tested by the Court. The fact that the confession has been made voluntarily, free from threat and inducement, can be regarded as presumptive evidence of its truth. Still, there may be circumstances to indicate that the confession can not be true wholly or partly in which case it loses much of its evidentiary value.

In order to be assured of the truth of confession, this Court, in a series of decisions has evolved a rule of prudence that the court should look to corroboration from other evidence. However, there need not be corroboration in respect of each and every material particular. Broadly, there should be corroboration so that the confession taken as a whole fits into the facts proved by other evidence. In substance, the court should have assurance from all angles that the retracted confession was, in fact, voluntary and it must have been true."

577. Similarly in **Alok Nath Dutta Versus State of West Bengal I (2007) CCR, 391 (Supreme Court)**, again the Hon'ble Apex Court reiterated the above said position in the following words:-

"Judicial confession must be recorded in strict compliance of the provisions of Section 164 of the Code of Criminal Procedure. While doing so, the Court shall not go by the black letter of law as contained in the aforementioned provision, but must make further probe so as to satisfy itself that the confession is truly voluntary and had not been by reason of any inducement, threat or torture.

The Courts while applying the law must give due regard to its past experience. The past experience of the Courts as also the decisions rendered by the superior Courts should be taken as a wholesome guide. We must remind ourselves that despite the fact that procedural

safeguards contained in Section 164 of the Cr.P.C may be satisfied, but the courts must look for truthfulness and voluntariness thereof. It must, however, be remembered that it may be retracted subsequently. The Court must, thus, take adequate precaution. Affirmative indication of external pressure will render the retracted confession nugatory in effect. The Court must play a proactive role in unearthing objective evidence forming the backdrop of retraction and later the examination of such evidence of retraction. However in cases where none exists, the Court must give the benefit of doubt to the accused. Where there is no objective material available for verifying the conditions in which the confession was retracted, the spirit of Section 24 of the Evidence Act (irrelevance of confession caused by inducement) may be extended to retracted confession. An inverse presumption must be drawn from absence of materials.

In case of retracted confession, the Courts while arriving at a finding of guilt would not ordinarily rely solely thereupon and would look forward, for corroboration of material particulars. Such corroboration must not be referable in nature. Such corroboration must be independent and conclusive in nature.

Whatever be the terminology used, one rule is also certain that no judgment of conviction shall be passed on an uncorroborated retracted confession. The Court shall consider the materials on record objectively in regard to the reasons for retraction. It must arrive at a finding that the confession was truthful and voluntary. Merit of the confession being the voluntariness and truthfulness,

the same, in no circumstances should be compromised. We are not oblivious of some of the decisions of this Court which proceeded on the basis that conviction of an accused on the basis of a retracted confession is permissible but only if it is found that retraction made by accused was wholly on a false premise."

578. Similarly, the Hon'ble Apex Court in **State of Tamilnadu Versus Nalini, 1999 Criminal Law Journal, page 3124 known as Rajiv Gandhi's assassination case** again considered the legal position of the confessions vis a vis Section 30 of the Evidence Act and held as under:-

"Sections 24 to 30 deal with confession, Section 24 speaks of the effect of a confession made by an accused through inducement, threat or promise proceeding from a person in authority. Whereas Section 25 and Section 26 deal with situations where such 'person or authority' is police. It is an institutionalized presumption against confession extracted by police or in police custody. In that frame of reference, Section 24 is the genus and Section 25 and 26 are its species. In other words, Section 25 and Section 26 are simple corollaries flowing out of the axiomatic and generalized proposition (confession caused by inducement where inducement proceeds from a [person in authority, is bad in law) contained in Section 24. They are directed towards assessing the value of a confession made to a police officer or in police custody."

579. Similarly, in **Babu Bhai Udesinh Parmar Vs.**

**State of Gujrat, IX (2006) SLT 117-IV (2006) CCR
372 (SC)-2006 (12) SCALE 385** ,the Hon'ble Apex
Court settled that

"The policy underlying behind Sections 25 and 26 is to make it a substantive rule of law that confessions whenever and wherever made to the police, or while in the custody of the Police unless made in the immediate presence of a Magistrate, shall be presumed to have been obtained under the circumstances mentioned in Section 24 and, therefore, inadmissible, except so far as is provided by Section 27 of the Act."

Section 164, however, makes the confession before a Magistrate admissible in evidence. The manner in which such confession is to be recorded by the Magistrate provided under Section 164 of the Code of Criminal Procedure. The said provision, inter alia, seeks to protect an accused from making a confession, which may include a confession before a Magistrate, still as may be under influence, threat or promise from a person in authority. It takes into its embrace the right of an accused flowing from Article 20(3) of the Constitution of India as also Article 21 thereof. Although, Section 164 provides for safeguards, the same can not be said to be exhaustive in nature. The Magistrate putting the questions to an accused brought before him from police custody, should some time, in our opinion, be more intrusive than what is required in law

580. Applying the above settled propositions of law, first of all let us take the confession of the

accused persons and to see whether making of these confessions by these accused persons is proved as per the law and the guidelines laid down by the Hon'ble Apex Court.

581. Before doing so, let us point out the material facts, which have been disclosed by the accused Balwant Singh, Jagtar Singh Tara and accused Shamsher Singh in their confession.

582. Accordingly on the perusal of the confession of accused Balwant Singh, Ex.PW65/F shows that he disclosed the following main circumstances leading to this killing:-

(a) After joining the police services, his father was killed by the terrorists and some where in March, April, 1995, his old friend Harjit Singh, who was settled in U.S.A came to India and met him and he discussed with him about the excess committed by the Police on the innocent persons on the instigation of Beant Singh, then Chief Minister, Punjab, who is also indulging in dictatorship and as per that discussion, both of them decided to kill Beant Singh.

(b) Balwant Singh then disclosed

that he is ready to kill Beant Singh if necessary in puts be provided to him and Harjit Singh then told him that he will discuss this matter in U.S.A and will consider the plan.

(c) Thereafter accused Balwant Singh discussed this fact with his friend deceased Dilawar Singh, who was also ready to sacrifice himself for the cause of his community.

(d) In the beginning of June, 1995 Harjit Singh rang up Balwant Singh and asked him to meet his friend at Sheesh Ganj Gurudwara, Delhi, where that person was staying and waiting for Balwant Singh.

(e) Accused Balwant Singh went to Sheesh Ganj Gurudwara, where one person, who was later on identified as accused Manjinder Singh @ Bawaji, met him and took him to a Hotel, where he introduced Balwant Singh with accused Jagtar Singh Hawara and all of them discussed the planning to kill Beant Singh and Balwant Singh also offered the services of his friend Dilawar Singh for this purpose. After discussions, accused Jagtar Singh

Hawara took his telephone number.

(f) In the first week of July, Jagtar Singh Hawara came to Patiala and stayed with accused Balwant Singh, where the security arrangements of Beant Singh were discussed and Jagtar Singh Hawara disclosed that they will kill Beant Singh with the help of a human bomb and a car will be required to enter the Secretariat. Jagtar Singh Hawara also told that he will prepare the belt bomb. Then a second meeting took place, which was also attended by Dilawar Singh, and the plan to kill Beant Singh was finalised and Jagtar Singh Hawara promised to arrange the necessary inputs for this plan.

(g) Jagtar Singh Hawara arranged the explosive RDX and also promised to arrange the Car and asked for making of a cloth belt to make the bomb. Accused Jagtar Singh Hawara and Balwant Singh got stitched the cloth belt and police uniforms from a tailor in the A.C market at Patiala.

(h) On 24.8.1995, in the evening Jagtar Singh Hawara and Balwant Singh

met at University Gate, Patiala, where two persons were present with the Car and all of them reached Gurudwara Dukh Nivaran, Patiala. At Gurudwara Dukh Nivaran, Patiala, Jagtar Singh Hawara introduced two persons as Paramjit Singh, who is facing trial in a separate case and accused Jagtar Singh Tara since proclaimed offender.

(i) On the next date, accused Dilawar Singh was also called at Patiala and all of them discussed the plan and they decided to change the colour of the car into 'off-white' to show it as an official car.

(j) After that all of them started for Chandigarh. On the way Paramjit Singh got down and accused Jagtar Singh Hawara etc. brought some more explosive and all of them came to Chandigarh after getting the belts and uniforms.

(k) On 26.8.1995 Jagtar Singh Hawara and Balwant Singh again met at Patiala and prepared the belt bomb. On 27.8.1995 Dilawar Singh came to them and some splinters etc were also

brought from the Kabari market and added in the belt.

(l) On 28.8.1995 all of them met at Chandigarh and the accused Dilawar took them in a room in a house in Phase-IV of Mohali, which was occupied by accused Gurmeet Singh and accused Gurmeet Singh was introduced by accused Dilawar Singh to all of them.

(m) Thereafter accused Dilawar Singh, Balwant Singh met accused Lakhwinder Singh, who was already joined in the conspiracy being a Police Constable posted in Secretariat to know the whereabouts of Beant Singh. On the same night, some more explosives and nut bolts were put in the belt bomb in the room of accused Gurmeet Singh.

(n) On 29.8.1995 Dilawar Singh and Lakhwinder Singh went on Scooter and thereafter the car was taken from the painter in the evening. Balwant Singh and Dilawar Singh went to the Painter's shop on the scooter of Balwant Singh and the friend of accused Lakhwinder Singh brought back the Scooter.

(o) After taking the delivery of Car, Balwant Singh, Jagtar Singh Hawara and Dilawar Singh met in the room of Gurmeet Singh and the belt was put on by Dilawar Singh but when they reached Secretariat, they found that Beant Singh had already left and as such they came back and parked the Car and removed the belt bomb and the dress of Dilawar Singh and kept the same in the room of Gurmeet Singh.

(p) After that accused Balwant Singh and Dilawar Singh met Lakhwinder Singh and had liquor and then went to the house of Chamkaur Singh, brother of Dilawar Singh and stayed there for the night.

(q) On 31.8.1995 accused Balwant Singh and Dilawar Singh came to Mohali where Jagtar Singh Hawara, Jagtar Singh Tara etc were there. Thereafter, again Dilawar Singh put on the belt bomb and accused Jagtar Singh Tara and Dilawar Singh went to Secretariat in the Car whereas Balwant Singh and Jagtar Singh Hawara reached on their Scooter. On the way Jagtar Singh Hawara got down and after reaching Secretariat, he joined

Dilawar and Jagtar Singh Tara and they waited for the movements of Beant Singh.

(r) At about 5.15 p.m when Beant Singh came out Dilawar Singh went towards VIP gate and Balwant Singh left Secretariat on his Scooter and thereafter Dilawar Singh exploded himself and killed Beant Singh and others.

(s) Then Balwant Singh disclosed the places where he stayed with accused Jagtar Singh Hawra and others and under what circumstances, till his arrest.

583. Similarly accused Jagtar Singh Tara, in his confession, Ex.PW-86/4 to Ex.PW-84/6 while reiterating the facts stated by accused Balwant Singh, disclosed that:-

a. Accused Paramjit Singh, (who is being tried separately) who was also residing in Delhi and was already known to him.

b. In July, 1995 Paramjit introduced him with accused Jagtar Singh Hawara saying that he is active member

of Babbar Khalsa and came from Pakistan after having training, with a mission to kill Beant Singh, who is enemy of Sikh community and he should help him.

c. He further disclosed that as per the plan he and accused Jagtar Singh Hawara purchased a ambassador car no. DBA-9598, on 20-08-1995, from S.K.Datta of Pachim Vihar Delhi for a sum of Rs. 32000/- and he represented himself as Basant Singh S/o Jagir Singh and parked the car in the house of accused Paramjit Singh at Delhi.

d. He further disclosed that as per the plan and directions of Jagtar Singh Hawara on receiving message from him, he and Paramjit Singh reached Patiala on 24-08-95 near University Gate, where accused Jagtar Singh Hawara along with Balwant Singh met him and asked him to meet on 25-08-95 at Gurudwara Dukh Niwaran.

e. On 25-08-95 he and Paramjit Singh went to Gurudwara, where accused Jagtar Singh Hawara, Balwant Singh and Dilawar Singh met them and all of started for Mohali. On the way accused

Jagtar Singh Hawara took the car towards village Jhingran kalan and brought two bags containing RDX and other articles and they reached the house of accused Gurmit Singh in Phase-IV, Mohali. On reaching there some of the ammunition was kept in the house of Gurmit Singh whereas some part was kept in house of accused Jagrup Singh.

f. On 26-08-95 as per the directions of Jagtar Singh Hawara accused Paramjit and Dilawar were asked to get the car repainted into white colour so that it looks like a Govt. car

g. On 28-08-95 accused Jagtar Singh Hawara and Balwant Singh brought some more arms and ammunition and kept the same in the house of Jagrup Singh. And after that some of the arms and ammunition were shifted to the house of accused Navjot Singh.

h. On 30-08-95 accused Lakhwinder Singh and Dilawar Singh brought the car after repaint and as per the plan he along with accused Jagtar Singh Hawara, Balwant Singh and Dilawar Singh reached Secretariat to kill Beant Singh at

about 4/4.30 pm but Beant Singh had already left the Secretariat and as such they came back to do the needful on the next day.

i. On 31-08-95 they all again reached Secretariat and at about accused Dilawar Singh did the needful and killed Beant Singh.

j. He also confessed that he had already shown the house of S.K Dutta from he had purchased the car and also identified the house at village Jhingran Kalan from where accused Jagtar Singh Hawara brought RDX.

584. To the same effect is the confession of accused Shamsher Singh. However, in addition to the above facts, the other material facts disclosed by him as to this conspiracy and its execution including his own role and the role of the other accused persons, are as follows:-

(a) That he was knowing accused Jagtar Singh Hawara since 1993 through another terrorist Didar Singh and as such Jagtar Singh Hawara visited him on and often.

(b) In the month of July, 1995 Jagtar Singh Hawara came to him and disclosed to him that he has come from Pakistan and Wadhawa Singh and Mehal Singh have directed him to kill Beant Singh and he i.e Shamsheer Singh was also not happy with the act and conduct of Beant Singh, who was claiming himself to be the incarnation of Guru Nanak Dev and Guru Gobind Singh and as such he should be punished.

(c) On 7/8.7.1995 Jagtar Singh Hawara requested him to help him for their operation and asked him to meet him i.e Jagtar Singh Hawara at Bangla Sahib Gurudwara on 16.7.1995.

(d) On 16.7.1995 he met Jagtar Singh Hawara at the above place where one more person Harjit Singh @ Mini Bawa was also present and got some instructions from somebody on telephone and he returned back.

(e) On 8.8.1995 Jagtar Singh Hawara asked him that they have to go to a Village near Ajnala to bring RDX to kill Beant Singh and then he talked to some person on telephone and asked him that

they are coming to get the RDX.

(f) After that Jagtar Singh Hawara directed him to arrange a truck and meet him at Rajpura bye-pass along with the Truck. Accordingly, he requested Sapinder Singh, his cousin brother, for the truck and he agreed to provide his Truck and he along with Sapinder Singh, Daljit Singh and one Bihari servant reached Rajpura bye-pass. On the way, Daljit Singh and Bihari servant were left at Village Ukasi. Then they reached at Zimidara Dhaba, where one more person met Jagtar Singh Hawara and he accompanied them to a Village near Ajnala

(g) After reaching at a distance of 20 to 25 kms away from Ajnala, Jagtar Singh Hawara stopped the Truck and he along with the other persons went to some place and after some time came back with two bags and asked him to keep the same in the tool box of the truck. After that, they started their journey and returned back. On the way, a person, who was called Lucky @ Toni got down and all of them reached in his house and Jagtar Singh Hawara kept both the bags in his

house and Sapinder Singh left with his Truck.

(h) On 10.8.1995 Jagtar Singh Hawara again met him near a Hotel at Rajpura bye-pass and made a telephonic call and talked in some coded language and then disclosed him that he has informed the caller that the human bomb is ready but a vehicle is required.

(i) On the next day Jagtar Singh Hawara took away both the bags of the RDX on Bajaj Chetak Scooter and Jagtar Singh Hawara promised him that they will kill Beant Singh as early as possible.

585. As submitted by learned defence counsel for remaining accused persons and as held above, these confessions can not be made sole basis to conclude the case unless corroborated generally. As such let us scan the evidence and compare the confessions with the rest of the evidence to decide whether the facts disclosed by accused Balwant Singh, Jagtar Singh Tara and Shamsher Singh leading to the killing of Beant Singh, which is otherwise admitted by Balwant Singh, are corroborated and supported by the evidence led on the file.

(a) Confession of accused Balwant Singh and its relevancy:

586. Applying the above settled propositions of law to the facts in hand, first of all, let us take the confession of accused Balwant Singh, Ex.PW65/F. In this regard it comes out that for the sake of repetition, accused Balwant Singh has confessed his guilt in clear terms but he denied the making of confession, Ex.PW65/F.

587. Accordingly, after considering the evidence of the prosecution and the contention of both the parties on this aspect, it comes out that the prosecution has successfully proved that the commission of the offence of killing of Beant Singh by Balwant Singh and assassin Dilawar Singh, is as per a conspiracy disclosed by Balwant Singh, in his confession Ex.PW65/F, which is proved to be legally and voluntarily made confession as per the safeguards laid down by the Hon'ble Apex Court as well as Section 164 of the Cr.P.C.

588. The prosecution has led sufficient evidence on the file which proves that the acts of omission and commission, as disclosed by accused Balwant Singh in his confessional statement are duly proved on the file and established beyond doubt that accused Balwant Singh, who was already having an ill-will towards Beant Singh, became a member of the conspiracy, which was hatched by

accused Jagtar Singh Hawara with the help of absconding accused persons in one way or the other.

589. To prove the making of confession by this accused, the material witness of the prosecution is PW-65, Shri V.K.Maheshwari then Metropolitan Magistrate, Patiala House Courts, New Delhi. Accordingly, when this witness stepped into the witness box, he deposed that on the application of CBI, Ex.PW65/C, then acting CMM vide his order Ex.PW65/C-1, ordered him to record the confession of accused Balwant Singh. Accordingly, accused Balwant Singh was produced before him on 22.1.1996 and after taking the accused in his custody, all the police officials were sent out of the Chamber and after questioning the accused as per the requirements of 164 Cr.P.C and after putting the specific questions to the accused as mentioned in the proceedings, Ex.PW65/D and Ex.PW65/E, he was satisfied that the accused is going to make a confession without any force or coercion, pressure, inducement or threat. Not even this, he further submitted that in order to ensure that there is no undue pressure or threat to accused Balwant Singh, he remanded him to judicial custody till 23.1.1996 and then after giving him sufficient time to think over, he recorded his confession on 23.1.1996 once again satisfying that accused Balwant Singh is making the confession voluntarily without any force or pressure, he recorded the confession of accused

Balwant Singh, Ex.PW65/F as per the facts disclosed by accused Balwant Singh without any addition or omission from his side.

590. He has categorically stated that before recording the confession of accused Balwant Singh, he did not find any mark of external or internal injury on the person of Balwant Singh and he had also explained to the accused that he is not bound to make any confession and if he will make the same, it can be used against him. He has further deposed that after recording the confession, Ex.PW65/F, he read over and explained the same to the accused and after hearing and understanding his statement, accused Balwant Singh put his signatures on the each page. Needless to say before recording the proceedings of the confession, he has introduced himself to accused Balwant Singh and put all the relevant questions provided under chapter 13 of High Court Rules & Orders, Volume 3.

591. After recording examination-in-chief of this witness, opportunity to cross examine this witness was granted to accused Balwant Singh, who was conducting his trial himself, but he failed to cross examine this witness despite due opportunity being granted. As stated earlier, in **State of HP Vs. Thakur Dass, (supra)**, the Hon'ble Himachal Pradesh High Court reiterated the well settled principle of law that when a statement made by a

witness on oath relating to some facts has not been challenged in cross examination, the fact, in question, must be held to be not disputed.

592. At the same time, this witness was cross examined by the learned defence counsel for remaining accused persons and despite incisive cross-examination of this witness, the learned defence counsel failed to point out any infirmity or any other favourable thing to show that the confession made by accused Balwant Singh was not voluntarily made.

593. The learned defence counsels tried to assail the statement of PW-65 mainly on two counts firstly, that the confession has been recorded in English and secondly, no legal aid was provided to accused Balwant Singh before recording his confession. However, none of these grounds are sufficient to say that the confession recorded by PW-65 is against the provisions of the law. PW-65 has categorically explained that accused Balwant Singh disclosed that he is a graduate and he had made the statement while using Hindi and English words and he recorded the same in English and explained the same to the accused in Hindi or Punjabi. If it is so, this is no ground to discard the confessional statement.

594. As far as the second plea is concerned,

while questioning accused Balwant Singh, PW-65 has questioned him on all the material aspects as to rule out the possibility of any torture, pressure, promise or inducement by the CBI or the Police and despite repeated questions, Balwant Singh disclosed that he wants to tell the truth as he understood all the implications of making of the confession but still he wants to make confession. If it is so, there is nothing on the file to say that the confession of accused Balwant Singh is against the procedural guidelines or the principles settled by the Hon'ble Apex Court as discussed above.

594. On the contrary, it shows that the confession of accused Balwant Singh is voluntarily made confession giving all the facts and circumstances under which this conspiracy was hatched and executed and some of these facts were so peculiar that it cannot be known to anybody else except accused Balwant Singh.

595. No doubt, accused Balwant Singh has tried to twist some facts as to the circumstances leading to this conspiracy and the identity and the role of remaining accused persons in this conspiracy but this endeavour of accused Balwant Singh proves in vain. To consider this aspect, the most important factor which is apparent on the record is, that the confession of accused Balwant Singh was recorded on 23-1-1996 and by that time all the remaining

accused persons of this trial, were already arrested and accused Balwant Singh was knowing that whatever he will disclose, the same would be used against his co-accused persons also. As such, with an intention to confuse the matter and to benefit his co-accused persons, he intentionally twisted certain facts so as to contradict the confessions of the other accused persons. Otherwise the facts disclosed by Balwant Singh are similar to the facts disclosed by accused Jagtar Singh Tara. Thus, this confession is a substantive evidence against accused Balwant Singh to link him with this conspiracy and is sufficient to convict him, specially when he has already confessed his guilt. At the same time, this confession can also be pressed into service to lend assurance of the circumstances brought on the file against the remaining accused persons, as per the spirit of Section 30 of the Indian Evidence Act, which aspect will be taken lateron.

(b) Confession of accused Jagtar Singh Tara and its relevancy.

597. Now let us take the confession of accused Jagtar Singh Tara, Ex.PW86/6. Before discussing the evidence of prosecution witnesses on this point, it will not be out of place to mention here that during the trial, when Jagtar Singh Tara was present and contesting the case, on 6.5.1999, he moved an application and thereby retracted from his

confession, alleging that he had suffered this confession under pressure and torture of the CBI and the Punjab Police and no legal assistance was given to him before recording his confession and as such his confession is not voluntarily made and it consists of false facts. However, while doing so, he also admitted that he was associated with deceased Dilawar Singh in killing S.Beant Singh, who was the enemy of the Sikh community but the manner in which it has been depicted in his confession is not correct.

598. Not even this, even before that on 2.9.1998 and 3.9.1998 this accused filed two different writings in his own hands, in which he admitted that since he is also propounder of Khalistan and thus, he, with the help of deceased Dilawar Singh, had killed Beant Singh, who was guilty of eliminating the innocent Sikhs and he has no remorse and ready to face any punishment. But he has not denied the making of confession in those applications. If it is so, in view of these writings, it comes out that, as submitted by learned Public Prosecutor, there is no legal retraction as per law. On the other hand, this accused has also admitted his role and participation in this conspiracy leading to killing of S.Beant Singh, whereas accused Balwant Singh while retracting from his confession alleged that only he and deceased Dilawar Singh were involved

and no other person was involved. Thus, this fact alone shows that it was not a case of conspiracy involving accused Balwant Singh and Dilawar Singh only, but some more persons were the members of this conspiracy, including accused Jagtar Singh Tara and performed their part as alleged by the prosecution.

599. With this background, let us consider the evidence of prosecution to know whether the confession made by accused Jagtar Singh Hawara is legally made and voluntarily suffered confession as per the requirement of the law and the guidelines laid down by the Hon'ble Apex Court as mentioned above.

600. To prove the confession of accused Jagtar Singh Hawara, the prosecution examined PW-86, Shri Balbir Singh, then Special Judicial Magistrate, CBI Court, Punjab at Patiala and this witness when appeared in the witness box categorically deposed that on 22.9.1995 accused Jagtar Singh Hawara was produced in the court along with the request, Ex.PW86/1 for recording the confession of this accused, as per his willingness. Accordingly, he took the accused in his custody and asked him to sit in the court and to think over and ordered that his statement will be recorded at 3.00 p.m. This order was passed by PW-86 at 12.00 p.m.

601. Accordingly, he further stated that at 3.00 p.m. he took up the matter and as per the requirements of the law, he has explained to the accused that he is a judicial Magistrate and that the accused is not bound to make any confession and if he will make the confession, it may be used against him and after questioning the accused, he was satisfied that the accused was free from any pressure, threat or fear and he intends to make confession of his own free will.

602. Not even this, he further stated that the accused himself prayed that he wants to make the confession without any pressure, threat as per his writing, Ex.PW86/3 and thereafter he recorded the confession of the accused as per the facts disclosed by him without any omission or addition which is Ex.PW86/6 and after recording the confession, he gave certificate, Ex.PW86/5 and also passed orders, Ex.PW86/2 and Ex.PW86/7 and thereafter remanded the accused to judicial custody as per his order Ex.PW86/11. PW-86 has categorically stated that when he recorded the confession of accused Jagtar Singh Tara, no one except he himself, his Reader and Steno-Typist, was present in the court along with accused Jagtar Singh Tara and no police official or CBI official, APP or any other person was present.

604. Although, this witness was cross examined

by learned counsel for the other accused persons but when opportunity to cross examine this witness was granted to accused Jagtar Singh Tara, who was present at that time and who was not taking the help of any Advocate, alleging that he does not want to contest this case as per his earlier writings, he suggested to PW-86 that he had requested him i.e PW-86 to provide him a counsel but this fact was denied by PW-86. A suggestion that the confession of accused Jagtar Singh Hawara was recorded as per the questions and answer given by Shri Rajan Malhotra, Special P.P. of the CBI without putting the same to the accused and thereby pressurized to suffer the confession, was denied by PW-86 categorically. Not even this, another suggestion was put to him that he has not recorded the confession of the accused correctly and as per the facts disclosed by him. It was during this cross examination, when accused Jagtar Singh Hawara moved the application dated 6.5.1999 retracting from his confession.

605. Thus, the cross examination of this witness clearly shows that there is nothing on the file to say that the confession of Jagtar Singh Hawara was recorded by PW-86 without satisfying himself about the state of mind of Jagtar Singh Hawara and without satisfying that he was under the pressure and threat of the CBI. Not even this, this witness was also cross examined by the learned

defence counsel for the other accused persons. But apart from cross examining him on irrelevant matters, nothing material comes out to say that the confession of the accused is not recorded as per the legal requirements and the guidelines. On the contrary, PW-86 has reiterated that when the accused was produced for the first time at 12.00 noon, he enquired from the accused as to his willingness to make the confession and at that time, no one was present in the court except accused and the court staff.

605. Not even this, he has categorically deposed that to ward-off the police pressure, if any, he asked accused Jagtar Singh Tara to sit in the court and to re-think. No doubt, it is admitted by PW-86 that he has not questioned the accused as to for how long he had been in the custody of the CBI and the Police remand or that whether he requires an Advocate. But this makes no difference because as stated by PW-86, accused Jagtar Singh Tara himself moved an application, Ex.PW86/3 wherein he submitted that he wants to tell everything true about the murder of S.Beant Singh and there is no pressure on him and he wants to make a voluntary statement in this regard. As such, this omission has no affect on the confession made by the accused Jagtar Singh Tara.

606. As far as the plea of learned defence

counsel that sufficient time was not granted to the accused before recording his confession is concerned, as stated earlier, this aspect was considered by the Hon'ble Apex Court in **Shankaria's case (Supra)**, where an interval of 15 minutes between the preliminary questioning and recording of confession was found sufficient and the Hon'ble Apex Court held that how much time for reflection should be allowed to an accused persons before recording his confession is a question, which depends on the circumstances of the each case. The only object of giving such time for reflection to the accused is to ensure that he is completely free from Police influence and there is no statutory provision for the same. But the only condition precedent for recording a confession by the Magistrate in the course of Police investigation is that the Magistrate should not record any confession unless upon questioning the accused making it, he has reason to believe that it is being made voluntarily. Thus, there is no force in this plea to discard the statement of PW-86.

607. In view of above discussion, the testimony of PW-86 remained unrebutted and clearly spells out that as admitted by this accused, he was part and parcel of this conspiracy and he had made a true and voluntarily confession giving the details of the conspiracy and the role of each of the accused persons, which is admissible, not only against

accused Jagtar Singh Tara since proclaimed offender for the purpose of Section 299 Cr.P.C., but it is also admissible against the other accused persons u/s 30 of the Evidence Act subject to the condition that there must be broad and general corroboration to the facts disclosed in the confession.

(c) *Confession of accused Shamsher Singh and its relevancy.*

608. Now let us take the confession of third accused Shamsher Singh. This accused has suffered a confession before PW-103, Dinesh Kumar Sharma, then Metropolitan Magistrate, Patiala House Courts, New Delhi. Before taking the evidence of prosecution, first of all, let us consider the two technical objection raised by learned defence counsel in this regard.

609. The first objection raised by learned defence counsel is that it is admitted case of the prosecution that in the first charge sheet filed against accused Gurmeet Singh etc., the name of this accused was also mentioned and if it was so, the police was having no authority to further investigate the case against this accused without the permission of the court and as such all the investigations made by the CBI against this accused after submission of the first charge sheet and taking of cognizance by the Sessions Court are illegal and vitiate the trial against this accused

and any evidence collected during those investigations cannot be read against the accused and secondly, that the recording of confession by PW-103 after filing of the charge sheet can not be taken into consideration being not permissible under the law as per the law laid down by Hon'ble Allahabad High Court in **Bachan Lal & Ram Sarup's case (Supra)** .

610. However, after going through the case law relied upon by the prosecution and after considering the facts & circumstances under which accused Shamsher Singh was arrested and challaned, it comes out that as submitted by learned Public Prosecutors, both these objections are without any legal basis and have no affect on the prosecution of accused Shamsher Singh on the basis of subsequent charge sheet.

611. In **Shri Bhagwan Samardha's case (supra)**, the Hon'ble Apex Court held that when Police after conducting the investigation submitted a final report against an accused and the Magistrate had taken the cognizance, it is open to Police to conduct further investigation with the formal permission of the court and the court has power to do so even without hearing the accused on this aspect.

612. Similar principle was reiterated by the

Hon'ble Kerala High Court in **Vijay Kumar's case (Supra)** and by the Hon'ble Andhra Pradesh High Court in **Ravi Krindi Rama Swami's case (Supra)**. However, the facts of the present case are totally distinguishable because in the first charge sheet submitted by the CBI, although the name of accused Shamsher Singh was mentioned but he was shown as absconder and no proceedings to declare him a proclaimed offender were initiated and completed and he was never charge sheeted with the other accused persons. On the contrary, a perusal of the record shows that after filing of the first charge sheet, on 18.12.1995 it was disclosed by the committed accused persons that accused Shamsher Singh has been arrested by the Punjab Police and on the basis of that information, this accused was arrested by the CBI in the present case and after conducting investigations against him, a supplementary charge sheet was filed against him.

613. As such, neither there was a charge sheet against this accused as per provision of Section 173 Cr.P.C nor any cognizance was taken against him by any court. On the contrary, a perusal of the first charge sheet shows that only five accused persons namely Gurmeet Singh, Lakhwinder Singh, Jagtar Singh @ Tara, Navjot Singh and Nasib Singh were sent for trial. Whereas the name of accused Shamsher Singh along with the other accused persons, who were also absconding, was mentioned in

column no.2, which is meant for name of the accused persons, who have not been sent for trial. Thus by no stretch of imagination, it can be said that accused Shamsher Singh was already charge sheeted and if it is so, the first plea proved in vain to derive any benefit for accused Shamsher Singh.

614. Similarly, the second plea also becomes redundant in view of the fact that once it is proved that accused Shamsher Singh was never charge sheeted in the first charge sheet as he was never arrested and his role was never investigated nor any trial was pending against him, the confession recorded by PW-103 was during the investigation of this case against this accused and not subsequent to the closing of the investigation and the submission of the charge sheet. Similarly, it is also proved that no trial was commenced against this accused either before committing Magistrate or before the Court of Sessions. As such, this plea also proves in vain and the case law relied upon by the defence on this aspect is of no help to the accused specially when perusal of the commitment order dated 11.12.1995 of the then Chief Judicial Magistrate, Chandigarh shows that after considering the charge sheet, he has committed the case to the Court of Sessions only against five accused persons, who were sent for trial.

615. Now, let us consider the confession of

accused Shamsher Singh on merits, as to whether it is legally and voluntarily made and suffered.

616. To prove the confession of accused Shamsher Singh, the prosecution has examined PW-103, Dinesh Kumar, then Metropolitan Magistrate, Patiala Courts House, New Delhi and this witness, when appeared in the witness box categorically deposed that on 15.12.1995, on the application of the CBI, Ex.PW103/A and as per the orders of A.C.M.M., Delhi, Ex.PW103/B, he took up the proceedings for recording the confession of accused Shamsher Singh on 16.12.1995, as on 15.12.1995 accused Shamsher Singh was not produced.

617. He further deposed that on 16.12.1995, at around 11.30 a.m. accused Shamsher Singh was produced before him and after sending everybody out of the court, he explained to the accused that he is not bound to make any confession and if he choses to make confession, the same may be used against him.

618. He further deposed that he also explained to the accused that he is working as Metropolitan Magistrate and the accused disclosed that he is religious person and he wants to make a confession to bring true facts on record giving his explanation as mentioned in the proceedings, Ex.PW103/D, saying that he is going to make the

confession without any coercion, undue influence or threat and he (PW-103) was satisfied that the accused is not under any pressure or threat or fear and he intends to make confession of his own free will.

619. As per PW-103, although he was satisfied that there is no pressure on the accused, however to ward-off any such pressure, or undue influence etc., he asked the accused to sit in the court and think over, saying that he will take up the matter again at 3.00 p.m.

620. As per this witness, at about 3.35 p.m., he again took up the matter and as per the requirements of the law, he again explained to the accused that he is not bound to make any confession and if he will make and then even if he retracts from the same, it will be used against him and that he will not be handed over to the CBI even if he will not make any statement and thus again questioned the accused and was satisfied that accused is free from any pressure or influence and after giving his opinion in this regard Ex.PW103/F, he recorded the confessional statement of accused Shamsher Singh running into 8 pages, Ex.PW103/G, as per the facts disclosed by the accused without any omission or addition. After recording the confession, the same was read over & explained to the accused and he signed it in token of its

correctness on all papers and he (PW-103) gave his certificate, Ex.PW103/H.

621. He further deposed that after recording his statement, the accused was remanded to judicial custody with direction to the jail authorities to produce him at Chandigarh on 18.12.1995, as per his order, Ex.PW103/K and thereafter, after supplying the copies of disclosure statement, he forwarded the proceedings to CJM, Chandigarh through ACMM, Patiala House, New Delhi.

622. During the cross examination of this witness, a suggestion was put to him that confession of accused Shamsher Singh has been recorded by force and under the pressure of CBI but it was denied by the witness.

623. Apart from this, he was also cross examined incisively by the learned defence counsels to allege that the confession of accused Shamsher Singh was not a voluntarily made confession and not recorded as per the legal requirements. However, this endeavor of learned defence counsels proved in vain, as the testimony of this witness remained un rebutted and there is nothing on the file to say that the confession of accused Shamsher Singh is not recorded as per the requirement of law and same is not voluntarily made confession.

624. Now let us take up the grounds put forward by the learned defence counsel to challenge the testimony of PW-103 consisting of some legal objections and factual assertions based on the cross examination of PW-103.

625. As far as the first plea of learned defence counsel as to the circumstances, under which the name of accused Shamsher Singh surfaced in the investigation and before whom, is concerned, this plea is without any basis because PW-248, S.N.Saxena, Chief Investigating Officer of the case, categorically explained that after the arrest of accused Jagtar Singh Tara, he disclosed the name of accused Shamsher Singh during his interrogation but he could not be arrested as he was absconding and later on when he came to know about the arrest of the accused by the Punjab police, he instructed PW-231, Rajesh Kumar, Inspector, CBI to arrest this accused as he has been arrested by the Punjab Police and was to be produced in the court of Special Magistrate, CBI, Patiala. PW-231 has also explained this fact. No doubt, as submitted by learned defence counsel, in the disclosure statement made by Jagtar Singh Tara, there is no mention of the name of this accused and even in his confession also but it makes no difference as it is for the Investigating Officer to see as to how he arrest the suspected accused. As such, this plea

proves in vain to raise any doubt as to the identity of accused Shamsher Singh.

626. As far as the plea of learned defence counsel that the arrest of this accused is also doubtful and goes to show that he was already under the custody of Punjab Police and was tortured and forced to suffer this confession, is concerned, again there is no force in this plea because it is explained by PW-231 that as per the direction of PW-248, he went to the court of Special Magistrate, CBI, Patiala, where accused Shamsher Singh was going to be produced and he filed an application for taking the custody in this case. On his application, the Special Magistrate, CBI, granted him permission to arrest the said accused. During the course of arguments, the learned defence counsels have placed on the record copy of the order of the Special Magistrate dated 11.12.1995, which clarifies the entire issue.

627. A perusal of this order shows that when accused Shamsher Singh was produced before the court of SDM (sic SJM i.e. Special Judicial Magistrate), Patiala in some other case, on the application moved by PW-231, the Special Magistrate, CBI, permitted to arrest accused Shamsher Singh in this case and thereafter he was also remanded to police custody till 20.12.1995. Thus, there is no confusion as far as the arrest of

this accused by the orders of the Special Magistrate, CBI, is concerned, as stated by PW-231, in his examination-in-chief and the word Special Judicial Magistrate may be wrongly mentioned as SDM, instead of SJM during his statement because of similarity of pronunciation and wording.

628. This fact is further clear from the cross examination of PW-231 as in the first question, he has categorically stated that the accused was produced before the Special Judicial Magistrate, CBI and thereafter the word Special Magistrate has been mentioned as Sub Divisional Magistrate despite the fact that the tone and the toner of PW-231 was that all these proceedings were done by the Special Judicial Magistrate, CBI and this fact is also supported by the order of the Special Magistrate, CBI, which is part of the record.

629. Not even this, during the course of further cross examination of this witness, the zimni regarding these proceedings was also shown to the witness and in that zimni also, it is mentioned that the accused has been arrested from the court of Special Magistrate, Patiala and not from the court of Sub Divisional Magistrate, Patiala as is clear from the order dated 11.12.1995 which is part of record. Thus, this confusion has been created because of bona fide typographical mistake during

the cross examination of this witness. As such, this plea also proves in vain to falsify the case of the prosecution against this accused.

630. At the same time, it is admitted case of the prosecution that this accused was already arrested by the Punjab Police and there is no evidence on the file to say that he was in the illegal custody of the Punjab Police. If it is so, there is no question of presuming that accused Shamsher Singh was in illegal custody of Punjab Police and the arrest of the accused is duly proved to have been made on 11.12.1995. There is no admission on the part of Chief Investigating Officer regarding arrest of accused Shamsher Singh since September, 1995 and the plea of accused Shamsher Singh that he along with his brother and family members was arrested in September, 1995 is not supported by any evidence specially when it is admitted case of the defence that this accused was arrested only when they filed an application in this regard before this Court.

631. On the contrary, it is proved that this accused was arrested in FIR No.127 of 1995 by the Rajpura Police on 7.11.1995 along with other accused of that case and thereafter he was arrested in this case only when the CBI came to know about his arrest by the Punjab Police. As such this plea has no bearing on the defence of accused Shamsher

Singh.

632. Similarly, the plea of learned defence counsel that the CBI should have taken the production warrant of this accused instead of arresting him from Patiala, so that he could be produced before the Area Magistrate, where he would have a right to defend himself, but this process has been misused by the CBI just to deny the right of legal aid to this accused, is also without any basis and having no relevancy because the CBI was also legally justified in arresting the accused from Patiala after taking the permission of the concerned court.

633. In **State of Rajasthan Vs. Santosh Yadav's case (Supra)**, an authority relied upon by learned defence counsel, the question before the Full Bench was, whether production warrant requiring attendance of prisoner lodged in judicial custody in one case, can be issued for the purpose of investigations in another case and this question was answered in affirmative by the Full Bench. But how this authority is relevant for this case, is a fact, which is not clarified. As such, this plea has also no relevancy.

634. Similarly, the plea of learned defence counsel that no legal aid was provided to the accused before recording his confession, is also

without any basis because at the time of recording of confession, it is only the subjective satisfaction of the recording Magistrate to assess the mental state of affairs and the question of legal assistance will arise only if the accused alleged so, being an indigent person and it was in these circumstances that the Hon'ble Gauhati High Court in **Dimba Kalita Vs. State of Assam, 1987(1) Crimes, page 799**, held that recording of a confession of an indigent person without affording him legal assistance can be fatal but in the present case, there is nothing on the file to say that the accused was an indigent person or that he was not knowing his legal rights.

635. On the contrary, he was already in custody in a criminal case and was arrested on 7.11.1995 whereas he was produced before the Special Judicial Magistrate on 11.12.1995 and if it was so, then there is no question of providing him any legal aid by PW-103. Even, in the case relied upon by the defence, the confession was held to be containing exculpatory statement of causing death in right of private defence and was held to be not a confession. As such, this authority is of no help to the accused.

636. As far as, the plea of learned defence counsel that the accused was already in custody for more than 3 months including the illegal custody

and as such, he was under the thumb and pressure of the police and was forced to make the confession, is concerned, there is no force in this plea because as stated earlier, this accused was arrested by the CBI in the present case only on 11.12.1995 and thereafter, he was taken to Delhi, where he was interrogated and then produced before the court of Judicial Magistrate on 15.12.1995 which means that he was in the police custody only for 3 days i.e from 12.12.1995 to 14.12.1995 and he expressed his desire to make the confession on 14.12.1995 itself and as such there was no prolonged custody immediately preceding the making of confession by this accused.

637. In **Nathu Vs. State of UP, AIR 1956, Supreme Court, Page 56**, an authority relied upon by learned defence counsel on this aspect, it was held that a prolonged custody immediately preceding the making of confession is sufficient to stamp it as involuntary unless it is properly explained. Similarly in **Sarwan Singh Vs. State of Punjab (supra)**, this very principle was also settled with the findings that the unexplained prolong police custody of the accused before making his confession, makes it doubtful.

638. However, in this case, PW-103 has categorically deposed that before recording the confession, he was fully satisfied that there is no

pressure on the accused and only then he recorded the same and if it is so, the apprehension of learned defence counsel is not well founded and not available to the defence.

639. PW-103 has categorically explained that before recording the confession of the accused, he has questioned him extensively about the state of health of the accused, as to whether, he is under pressure or fear or influence by anybody to make confession; as to that if made it can be used against him and he can not retract from the same; as to the fact that he is working as Judicial Magistrate and lastly gave him time of about four hours to reconsider his desire of making the confession and after doing all these proceedings, as per his opinion, Ex.PW103/D and Ex.PW103/E, he was fully satisfied that the accused is making the confession voluntarily, without any pressure or fear etc.

640. Thus both the authorities relied upon by learned defence counsel on this plea are of no help to the defence specially when in **Sarwan's case (Supra)**, at the time of recording of confession by the Magistrate, the accused showed some injuries and yet the learned Magistrate did not enquire, how the accused suffered those injuries and only half an hour was given to him to rethink for making the confession, that too, without questioning him to

know that he is free from any pressure, fear or undue influence as per the requirement of Section 164(3). But in this case, these precautions have been duly taken by PW-103.

641. The next plea raised by learned defence counsel is that PW-103 has not explained to the accused in black & white that he is a Judicial Magistrate and thus the accused should have no fear in telling the truth. As such, there is nothing on the record to show that the accused was explained that he is before a Magistrate and he should not have any fear. Even in the entire proceedings of this confession, consisting of 11 pages, it is nowhere mentioned by PW-103 that he is a Judicial Magistrate and he is conducting the proceedings, as such. Even under his signatures and orders, he has not mentioned his designation, which further shows that the accused was never explained about this fact and as such the entire proceedings of recording of confession stand vitiated and makes this confession inadmissible. In support of this plea, he has relied upon **Santana Badchat Vs.State of Orrisa's case (Supra)**.

642. However, after going through the testimony of PW-103 and the proceedings of the confession, it comes out that no doubt in the proceedings, a specific question in black & white has not been recorded by PW-103, that he introduced himself to

the accused before starting the proceedings of confession. But PW-103, when appeared in the witness box, categorically deposed that when the accused was produced before him in the court, he explained him that he is working as Metropolitan Magistrate and then questioned him about his state of mind etc. and his willingness to make the confession.

643. Thus, simply because of the fact that this fact is not brought on record, in black & white, is not sufficient to say that the accused was not knowing that he is being produced before the Magistrate, specially, when PW-103 has also stated that the accused was produced in the court room and after asking everybody to go out, he questioned the accused. Thus, this is no ground to discard the confession recorded by PW-103 or to say that it is not voluntarily suffered.

644. The next plea on which the confession was challenged by learned defence counsel was that in **Sarwan Singh's case (Supra)**, it was settled by the Hon'ble High Court that in every case of recording of confession, the Magistrate is required to put the question prescribed under the High Court Rules and Orders, as per the requirement of Sub Section 3 of Section 164 of the Cr.P.C and if those prescribed questions have not been put to the accused and the confession is recorded directly, it

makes the confession highly doubtful and involuntary. This very principle was again reiterated by the Hon'ble Apex Court in **Dagdu Vs. State of Maharashtra, AIR, 1977, Supreme Court, 1579, and Ayub Vs. State of U.P's case (Supra).**

645. He further submitted that in the present case, as is clear from the proceedings of the confession, no question, what to talk of the prescribed questions as per the High Court Rules & Orders of Punjab & Haryana, has been put to the accused Shamsher Singh by PW-103 before recording his confession. As such, failure to comply with Section 164 Sub Section (3) Cr.P.C, will render the confession inadmissible.

646. However, after going through the case law relied upon by both the parties on this aspect, it comes out that as submitted by learned Public Prosecutor, in the present case, PW-103 has complied with the provisions of Section 164 Sub Section 3 of the Cr.P.C by holding a preliminary enquiry with an object to obtain an assurance of the fact that the confession is not caused by inducement, threat or promise or under force or compulsion.

647. Above all, the High Court Rules & Orders of Punjab & Haryana High Court are not applicable in the State of Delhi nor any such Rules or

Directions, if issued, by the Hon'ble Delhi High Court have been brought on record. At the same time PW-103 has specifically deposed that before recording the confession of the accused, he put specific questions to the accused to know that the accused is not under any threat, fear or pressure to make the confession and that he was fully knowing that the confession, if made, can be used against him. In this regard as deposed by PW-103, no doubt he has not conducted the preliminary enquiry in question and answer form but as is clear from the proceedings Ex.PW103/D, Ex.PW103/E and Ex.PW103/F, he had incisively questioned the accused and explained him that the accused was not bound to make the confession and if he will make, it can be against him and as to why he is going to make the confession and that had there been any pressure, threat, advise or inducement by the Police to make the confession.

648. At the same time, during his testimony, PW-103 has further deposed that in the application, Ex.PW103/A, it was already mentioned that the accused was arrested on 11.12.1995 and he was produced before the A.C.M.M on 15.12.1995 and after that he questioned the accused about the relevant facts and also granted him a time of four hours to re-consider his intention and even after that, he again questioned the accused and when the accused was fully prepared to make the confession without

any fear or compulsion and with his free will, the same was recorded by him.

649. A perusal of the preliminary enquiry, Ex.PW103/D and PW103/E, shows that the accused was informed that he is not bound to make the confession and if he will make, it will go against him and why he is making the confession. It was also mentioned that the accused was physically fit and there was no apparent mark of injury on his person and he had a good sleep on the night of 15.12.1995 and have his break fast.

650. Despite this, though PW-103 was satisfied that the accused is mentally and physically fit and going to make the confession voluntarily, a period of four hours was given to the accused to reconsider his desire. And after four hours, PW-103 has conducted a similar enquiry and even the accused was explained that after making the confession, he can not retract from the same and it was also explained to him that he will not be handed over to the CBI, even if he does not make any statement. But he can not retract from the confession, if made, but still the accused expressed his desire to make the confession.

651. Thus, PW-103 was fully satisfied, as per the precautions and guidelines laid down by the Hon'ble Apex Court, that accused is free from any

type of pressure, threat or inducement and if it is so, both the authorities relied upon by the defence are not applicable to the facts in hand because in **Dadgu's case (Supra)**, before recording the confession of accused, the Magistrate made no efforts to ascertain from the accused whether he is making the confession voluntarily without any inducement or threat by the Police and had not granted any time to the accused for reflection and on those facts, it was held that it is not true compliance of Section 164 Sub Section (3) of the Cr.P.C.

652. Similar were the facts in **Sarwan's case (Supra)**, as mentioned above while considering the affect of custody of the accused before his confession. At the same time in **Ayub's case (Supra)**, the confession involved was under the provision of Section 15 of TADA Act, which stands on different footing than a confession u/s 164 Cr.P.C and as such all the authorities are of no help to the defence.

653. Similarly, a suggestion put to PW-103 that the accused was tortured and forced to make the confession, was vehemently denied by the witness, which shows that the plea of learned defence counsel that the accused was tortured and pressurized to suffer this confession is also without any basis as no such plea was put forward

by the accused when he was questioned by PW-103 in this regard.

654. In **Vidya Wati Vs. State, AIR 1951, Himachal Pradesh, page 82**, the Hon'ble Himachal Pradesh High Court held that where there is evidence that the accused was tortured and forced to make the confession, the same is not admissible in evidence. However, in this case, there is no such evidence. As such, this authority is no help to the applicant.

655. One more plea raised by learned defence counsel, to say that the confession of accused Shamsher Singh was not voluntary, is that it is admitted case of PW-103 that the accused disclosed to him that he is going to suffer the confession due to compulsion so that he might not be implicated otherwise and it shows that the confession of accused was not voluntarily but it was under the compulsion and thus not reliable. However, after going through the case law relied upon by learned defence counsel on this aspect, it comes out that this fact is not disclosed by the accused in the sense interpreted by learned defence counsels.

656. In **Raja Khima Vs. State of Saurashtra , AIR, 1956, Supreme Court, page 217**, the Hon'ble Apex Court held that "a confession can not be used

against an accused person unless the Court is satisfied that it was voluntary and while the Court is considering this question, the question whether it is true or false does not arise. It is abhorrent to notions of justice and fair play, and is also dangerous to allow a man to be convicted on the strength of a confession unless, it is made voluntarily and unless he realises that anything he says may be used against him and any attempt by a person in authority to bully a person into making a confession or any threat or coercion would at once invalidate if it the fear was still operating on his mind at the time he makes the confession and if it would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him."

657. However, in the present case, a perusal of the confession of accused Shamsher Singh shows that he has nowhere stated that he is making the confession under some compulsion or to avoid a big evil of a temporal nature. On the contrary, he disclosed that he is a religious person and he came in contact with terrorists as he was also having threat to his life from terrorist groups and whatever he did in this case was under compulsion and he wants to make a statement so that a true story should come out, apprehending that otherwise other witnesses may implicate him more seriously.

658. This fact clearly shows that what the accused disclosed to the Magistrate was that he is associated in this case in one manner or other but it was due to some compulsion but as far as making of confession is concerned, he discloses that he wants to make the confession to bring the true facts on the record so that his role should not be multiplied by the other witnesses and thus by no stretch of imagination, it can be said that the accused was making the confession under some compulsion or under belief that by making it he would gain any advantage or avoid any evil of temporal nature. Thus, the facts of the present case are clearly distinguishable and the case law relied upon is not applicable.

659. As far as the last resort of the learned defence counsel that sufficient time was not granted to the accused for reflection before recording his confession which makes it inadmissible and was rightly retracted by this accused, is concerned, again there is no force in this plea also because it is proved on the file that PW-103 has given a time of four hours to accused Shamsher Singh for reflection, which, in the facts and circumstances of the case, was sufficient and reasonable.

660. As to whether this is sufficient time or

not is concerned, as mentioned earlier, in **Shankaria's case (Supra)**, the Hon'ble Apex Court after considering the **Sarwan Singh Vs. State of Punjab's case (Supra)**, held that there is no statutory provision in Section 164 of the Cr.P.C or else where that there should be an interval of 24 hours or more, between the preliminary questioning of the accused and recording of confession has the only requirement of the law is that the Magistrate not to record any confession unless upon questioning the accused making it he has reason to believe that it is being made voluntarily. And in that case although a time of 15 minutes was given to the accused to rethink, the Hon'ble Apex Court held that it is sufficient to see that the mind of the accused was free from any possible influence of the Police.

661. Similarly in **Sarwan Singh's case (Supra)**, the accused had visible marks of injury and he was in the prolonged custody of the police, which was also unexplained and the confession of the accused was recorded immediately on his production, without questioning him and without giving him adequate time to reconsider and on those facts the same was found to be doubtful but in this case, this aspect has already been discussed and held to be not as such. If it is so, there is nothing on the record to show that PW-103 has committed any material irregularity or violated the guidelines laid down

by the Hon'ble Apex Court before recording the confession of accused Shamsher Singh which makes it inadmissible in evidence. As such, this plea also proves in vain to say that there is any flaw or legal infirmity on the part of PW-103 in recording the confession of accused Shamsher Singh.

662. In view of the above discussion, the testimony of PW-103 remained unrebutted and clearly spells out that as stated by PW-103, the confession of accused Shamsher Singh, Ex.PW103/G is voluntarily made giving the details of the conspiracy and the role of the accused, which is clearly admissible against accused Shamsher Singh subject to the condition that there must be a broad and general corroboration to the facts disclosed in the confession, which will be taken up while discussing the evidentiary value of the confession of the accused persons.

663. Having thus reached a finding as to the voluntary nature of confessions of all the three above named accused persons, let us test the truth of the confessions, as the fact that the confessions have been made voluntary, free from threat and inducement, cannot be regarded as presumptive evidence of its truth. And there may be circumstances to indicate that the confessions cannot be true wholly or partly in which case it loses much of its evidentiary value.

664. In order to be assured of the truth of confessions, let us scan the entire evidence of the prosecution and compare it with confessions and to look for corroboration. But as far as the nature of corroboration is concerned, as per the legal position discussed above, specially in **Subramania's** case supra, it should not be meticulous examination of the entire material particulars and it is enough that there is broad corroboration in conformity with the general trend of the confession and taken as a whole it fits into the the facts proved by the evidence, even if it has been retracted later on.

665. In substance, the court should have assurance from all angles that the retracted confession was, in fact, voluntary and it must have been true. But it does not necessarily mean that each and every circumstance mentioned in the confession regarding the complicity of the accused must be separately and independently corroborated, nor it is required that the corroboration must come from the facts and circumstances discovered after the confession was made.

666. Let us now scrutinise the evidence and other facts and circumstances to lend assurance and general corroboration to the truth of confessions.

667. Before considering the factual aspect of

the evidence let us consider the following legal position as to certain legal issues.

1. What is relevancy of disclosures made under section 27 of the Evidence Act and its applicability to the facts of the case and its extent;
2. Relevancy of extra judicial confession and its evidentiary value;
3. Use of retracted confession against the co-accused;
4. The evidentiary value of the act & conduct of accused Jagtar Singh Hawara and Balwant Singh after commission of this offence including discovery of their abodes and hideouts along with its identification and the recoveries made on the basis of disclosures made by them;
5. The relevancy of identification of accused persons by some of the witnesses, on the basis of photo graphs shown to them during the investigations, and then their identification in the court.

DISCLOSURE STATEMENT & ITS ADMISSIBILITY AS PER THE PROVISIONS OF SECTION 27 OF EVIDENCE ACT.

668. As far as the interpretation of Section 27 of the Evidence Act is concerned, it has been agitated by the learned defence counsel that all the disclosure statements relied upon by the prosecution are hit by the provisions of Section 27 of the Evidence Act as no material fact has been

discovered in consequences of these disclosure statements even if those are presumed to have been made by the accused persons for a moment.

669. Whereas the contentions of prosecution are that the expression 'Discovery of fact' should be read with Section 3 of the Evidence Act which includes recovery of plain mental fact concerning the informant and not restricted to recovery of material object as alleged by defence counsel.

670. As such, the controversy remains- Whether the application of the Section is contingent on the recovery of a physical object is the moot question. Section 27 embodies the doctrine of confirmation by subsequent events. The fact investigated and found by the police consequent to the information disclosed by the accused amounts to confirmation of that piece of information. Only that piece of information, which is distinctly supported by confirmation, is rendered relevant and admissible u/s 27.

671. The other question is the physical object might have already been recovered, but the investigating agency may not have any clue as to the "state of things" that surrounded the physical object. And in such an event, if upon the disclosure made, such state of things or facts within his knowledge in relation to a physical

object are discovered, whether then also, it can be said to be discovery of fact within the meaning of Section 27.

672. The above said issues have been directly considered by the Hon'ble Apex Court in **State (NCT of Delhi) Versus Navjot Sandhu, 2005, Cr1.L.J. 3950** and the Hon'ble Apex Court taken into consideration the entire case law held that:-

"The physical object might have already been recovered, but the investigating agency may not have any clue as to the "state of things" that surrounded that physical object. In such an event, if upon the disclosure made such state of things or facts within his knowledge in relation to a physical object are discovered, then also, it can be said to be discovery of fact within the meaning of Section 27.

"The other aspect is that the pointing out of a material object by the accused himself is not necessary in order to attribute the discovery to him. A person who makes a disclosure may himself lead the investigating officer to the place where the object is concealed. That is one clear instance of discovery of fact. But the scope of Section 27 is wider. Even if the accused does not point out the place where the material object is kept, the police, on the basis of information furnished by him, may launch an investigation which confirms the information given by accused. Even in such a case, the information furnished by the accused becomes admissible against him as per Section 27 provided the correctness of information is confirmed

by a subsequent step in investigation. At the same time, facts discovered as a result of investigation should be such as are directly relatable to the information."

"We have noticed above that the confessions made to a police officer and a confession made by any person while he or she is in police custody can not be proved against that person accused of an offence. Of course, a confession made in the immediate presence of a Magistrate can be proved against him. So also Section 162 Cr.P.C bars the reception of any statements made to a police officer in the course of an investigation as evidence against the accused person at any enquiry or trial except to the extent that such statements can be made use of by the accused to contradict the witnesses. Such confessions are excluded for the reason that there is a grave risk of their statements being involuntary and false. Section 27, which unusually starts with a proviso, lifts the ban against the admissibility of the confession/statement made to the police to a limited extent by allowing proof of information of specified nature furnished by the accused in police custody. In that sense Section 27 is considered to be an exception to the rules embodied in Sections 25 and 26."

"The history of case law on the subject of confessions under Section 27 unfolds divergent views and approaches. The divergence was mainly on twin aspects:

(i) Whether the facts contemplated by Section 27 are physical, material objects or the mental facts of which the accused giving the information could be said to be aware of. Some Judges have gone to the extent of holding that the

discovery of concrete facts, that is to say material objects, which can be exhibited in the Court are alone covered by Section 27. (ii) The other controversy was on the point regarding the extent of admissibility of a disclosure statement. In some cases a view was taken that any information, which served to connect the object with the offence charged, was admissible under Section 27."

"The decision of the **Privy Council in Kotayya's case** , AIR 1947 PC 67 which has been described as a *locus classicus* had set at rest much of the controversy that centered round the interpretation of Section 27. To a great extent the legal position has got crystallized with the rendering of this decision. The authority of Privy Council's decision has not been questioned in any of the decisions of the highest Court either in the pre or post independence era. Right from 1950s, till the advent of the new century and till date, the passages in this famous decision are being approvingly quoted and reiterated by the Judges of this apex Court. Yet, there remain certain grey areas as demonstrated by the arguments advanced on behalf of the State."

673. The Hon'ble Apex court then laid down the requisite conditions of this dispute in following manner:

"The first requisite condition for utilizing Section 27 in support of the prosecution case is that the investigating police officer should depose that he discovered a fact in consequence of the information received from an accused

person in police custody. Thus, there must be a discovery of fact not within the knowledge of police officer as a consequence of information received. Of course, it is axiomatic that the information or disclosure should be free from any element of closure should be free from any element of compulsion. The next component of Section 27 relates to the nature and extent of information that can be proved. It is only so much of the information as relates distinctly to the fact thereby discovered that can be proved and nothing more. It is explicitly clarified in the Section that there is no taboo against receiving such information in evidence merely because it amounts to a confession. At the same time, the last clause makes it clear that it is not the confessional part that is admissible but it is only such information or part of it, which relates distinctly to the fact discovered by means of the information furnished. Thus, the information conveyed in the statement to Police ought to be dissected if necessary so as to admit only the information of the nature mentioned in the Section. The rationale behind this provision is that, if a fact is actually discovered in consequence of the information supplied, it affords some guarantee that the information is true and can therefore be safely allowed to be admitted in evidence as an incriminating factor against the accused."

674. Elucidating the scope of this Section, the Privy Council also in **Pulukuri Kottaya and others Vs. Emperor, AIR, PC 18**, also held that:-

"normally, the Section is brought into

operation when a person in police custody produces from some place of concealment, some object, such as a dead body, a weapon or ornaments, said to be connected with the crime of which the informant is the accused."

675. The material point to be noted is that the Privy Council rejected the argument of the counsel appearing for the Crown that the fact discovered is the physical object produced and that any and every information which relates distinctly to that object can be proved. Upon this view, the information given by a person that the weapon produced is the one used by him in the commission of the murder will be admissible in its entirety.

676. While defining the expression 'fact discovered' their Lordships held that:-

"it is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been

used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added "with which I stabbed. A" these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

677. The Hon'ble Privy Council also explained the probative force of the information made admissible under Section 27 in the following words:"

".....Except in cases in which the possession, or concealment, of an object constitutes the gist of the offence charged, it can seldom happen that information relating to the discovery of a fact forms the foundation of the prosecution case. It is only one link in the chain of proof, and the other links must be forged in manner allowed by law."

678. In paragraph 11, their Lordships observed that they were in agreement with the view taken by the High Courts of Lahore and Bombay in **Sukhan Vs. Emperor (AIR 1929 Lahore 344)** and **Ganuchandra Vs. Emperor (AIR 1932 Bombay 286)**. The contrary view taken by the Madras High Court in **Attappa Goundan Vs. Emperor (ILR 1937 Madras 695)** was not accepted by the Privy Council.

679. In **Attappa Goundan's case (supra)**, the Hon'ble High Court held that part of the confessional statement, which revealed the connection between the objects produced and the

commission of murder was held to be admissible under Section 27 in its entirety. This approach was criticized by the Privy Council.

680. Similarly Hon'ble Madras High Court in **Emperor Vs. Ramanuja Ayyangar (AIR 1935 Madras 528)**, disagreed with the view taken in **Sukhan's case (supra)** that the expression 'fact' in Section 27 should be restricted to material objects or something which can be exhibited as material object. It was held that the facts need not be self-probatory and the word 'fact' as contemplated by Section 27 is not limited to "actual physical material object". Emphasis was laid on the wording 'any fact'. In this respect, the view taken in Sukhan's case (supra) was dissented from. The minority view was that the discovery of a witness to the crime or the fact of the accused in purchasing the incriminating material can not be proved by invoking Section 27.

681. The Hon'ble Apex Court in **State Vs. Navjot's case supra** concluded that:-

"We are of the view that Kotayya's case is an authority for the proposition that 'discovery of fact' can not be equated to the object produced or found. It is more than that. The discovery of fact arises by reason of the fact that the information given by the accused exhibited the knowledge or the mental awareness of the informant as to its existence at a

particular place."

"The crux of the ratio in Kotaya's case was explained by this Court in *State of Maharashtra Vs. Damu*. Thomas J. observed that "the decision of the Privy Council in **Pulukuri Kotayya Vs. Emperor** is the most quoted authority for supporting the interpretation that the "fact discovered: envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect".

682. Similarly in **Mohmed Inayaltuallah Vs. The State of Maharashtra (1976) 1 SCC 828**), while clarifying that the expression "fact discovered" in Section 27 is not restricted to a physical or material fact which can be perceived by the senses, and that it does include a mental fact, explained the meaning by giving the gist of what was laid down in *Pulukuri Kotayya's* case. The Hon'ble Apex Court held that:-

"Now it is fairly settled that the expression "fact discovered" includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this."

683. So also in **Udai Bhan Vs. State of Uttar Pradesh (AIR 1962 SC 1116)**, after referring to *Kotayya's* case the Hon'ble Supreme Court stated the legal position as follows:-

"A discovery of a fact includes the object found, the place from which it is produced and the knowledge of the accused as to its existence."

684. There is almost a direct decision of the Hon'ble Apex Court on the point raised and disputed by learned defence counsel and in which the connotation of the expression "fact occurring in Section 27 was explored and a view similar to **Sukhan's** case was taken on the supposition that the said view was approved by the Privy Council in Kotayya's case.

685. That decision is **Himachal Pradesh Administration Vs. Om Prakash (1972) 1 SCC 249)**. In that case, on the basis of information furnished by the accused to the Police Officer that he had purchased the weapon from a witness and that he would take the police to him, the Police went to the Thari of PW11 where the accused pointed out PW11 to the Police. It was contended on behalf of the accused that the information that he purchased the dagger from PW11 followed by his leading the Police to the Thari and pointing him out was inadmissible under Section 27 of the Evidence Act. This argument was accepted. And it was held by Hon'ble Apex Court that:-

"In our view there is force in this

contention. A fact discovered within the meaning of Section 27 must refer to a material fact to which the information directly relates. In order to render the information admissible the fact discovered must be relevant and must have been such that it constitutes the information through which the discovery was made. What is the fact discovered in this case? Not the dagger but the dagger hid under the stone which is not known to the Police.

686. Not even this latest the Hon'ble Apex Court in **Antar Singh Vs. State of Rajasthan, 2004(10), SCC, 657**, again reconsidered the entire law on this aspect summed up the legal principles as follows:-

(1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.

(2) The fact must have been discovered.

(3)The discovery must have been in consequence of some information received from the accused and not by accused's own act.

(4)The persons giving the information must be accused of any offence.

(5)He must be in the custody of a police officer.

(6)The discovery of a fact in consequence of information received from an accused in custody must be deposed to.

(7)Thereupon only that portion of the information which relates distinctly or strictly to the fact.

687. Similarly the above settled principles of law was again reiterated by the Hon'ble Apex Court in **Geejaganda Somaiah Vs. State of Karnataka reported in JT 2007 (4) SC, page 380** in the following words:-

"For the applicability of Section 27 of the Evidence Act two conditions are pre-requisite, viz., (i) information must be such as has caused discovery of the fact, and (ii) the information must 'relate distinctly' to the fact discovered. Under

Section 27 only so much of the information as distinctly relates to the fact really thereby discovered, is admissible. While deciding the applicability of Section 27 of the Evidence Act, the Court has also to keep in mind the nature of presumption under illustration (a) to (s) of Section 114 of the Evidence Act. The court can, therefore, presume the existence of a fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relations to the facts of the particular case."

ADMISSIBILITY OF EXTRA JUDICIAL CONFESSION

688. As far as the legal position relating to the relevancy of extra judicial confession and how it is to be proved, is concerned, in **State of Rajasthan Vs. Raja Ram,V (2003) SLT 45-III(2003) CCR 189 (SC)-2003 8 SCC 180**, it was held that

"An extra judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the Court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any Court to start with a presumption that extra judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be

relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra judicial confession can be the basis of a conviction if it passes the test of credibility."

It was further observed :

"20. If the evidence relating to extra judicial confession is found credible after being tested on the touchstone of credibility and acceptability, it can solely form the basis of conviction. The requirement of corroboration as rightly submitted by the learned Counsel for the respondent-accused, is a matter of prudence and not an invariable rule of law"

689. In the case of **Gagan Kanojia and Anr. Vs. State of Punjab, IX (2006) SLT 406= (2007) CR 89 (SC)=Criminal Appeal Nos.561-62 and 563 of 2005**, decided on 24.11.2006, the Hon'ble Apex Court opined:

"Extra-Judicial confession as is well

known, can form the basis of a conviction. By way of abundant caution, however the Court may look for some corroboration. Extra judicial confession can not ipso facto be termed to be tainted. An extra-judicial confession, if made voluntarily and proved can be relied upon by the Courts."

690. Similarly in **Nazir Khan & Others Vs. State of Delhi, V (2003) SLT 14-III (2003) CCR 173 (SC)=106 (2003) DLT 70(SC)= 2003 8 SCC 461**, the Hon'ble Apex Court held that:

"A free and voluntary confession is deserving of the highest credit, because it is presumed to flow from the highest sense of guilty"

691. Similarly in State of **Rajasthan Vs Kashi Ram, 1 (2007) SLT 125=1 (2007) CCR 167 (SC)=2006 (11)SCALE 440**, wherein the Hon'ble Apex Court observed that:

"There was nothing to show that he had reasons to confide in them. The evidence appeared to be unnatural and unbelievable. The Hon'ble Apex Court observed that evidence of extra judicial confession is a weak piece of evidence and though it is possible to base a conviction on the basis of an extra judicial confession, the confessional evidence must be proved like any other fact and the value thereof depended upon the veracity of the witnesses to whom it was made."

692. Similarly in **Kishore Chand Vs. Himachal Pradesh, AIR 1990 Supreme Court, page 2140** the Hon'ble Apex Court again reiterated the same principle and held as under:

"An unambiguous extra-judicial confession assesses high probative value force as it emanates from the person who committed the crime and is admissible in evidence provided is free from suspicion and suggestion of its falsity. But in the process of the proof of the alleged confession the Court has to be satisfied that it is a voluntary one and does not appear to be result of inducement, threat or promise envisaged under S.24 or was brought about in suspicious circumstances to circumstance Ss.25 and 26. Therefore, the Court has to look into the surrounding circumstances and to find whether the extra judicial confession is not inspired by any improper or collateral consideration or circumvention of the law suggesting that it may not be true one. For this purpose the Court must scrutinize all the relevant facts such as the person to whom the confession is made, the time and place of making it, the circumstances in which it was made and finally the actual words used by the accused. Extra-judicial confession if found to be voluntary can be relied upon by the Court along with other evidence on record. Therefore, even the extra judicial confession will also have to be proved like any other fact. The value of the evidence as to the confession depends upon the veracity of the witness to whom it is made and the circumstances in which it came to be made and the actual words used by the accused. Some times it may

not be possible to the witness to reproduce the actual words in which the confession was made. For that reason the law insists on recording the statement by a Judicial Magistrate after administering all necessary warnings to the accused that it would be used as evidence against him."

693. Recently, in **Kulwinder Singh Vs. State of Punjab, II (2007) SLT 225=Criminal Appeal No.675 of 2006**, decided on 5.12.2006, the Hon'ble Apex Court held that:

"the evidentiary value of an extra judicial confession must be judged in the fact situation obtaining in each case. It would depend not only on the nature of the circumstances but also the time when the confession had been made and the credibility of the witness who testifies thereto."

694. The above discussed legal principles were also reiterated by the Hon'ble Apex Court in a most recent case **Aloke Nath Dutta & Ors Vs. State of West Bengal CCR 2007 S.C, 391**.

***IDENTIFICATION OF ACCUSED BY
PHOTOGRAPHS DURING INVESTIGATIONS
AND THEN IN THE COURT AND ITS
RELEVANCY IN COURT, WHEN NO TEST
IDENTIFICATION IS CONDUCTED***

695. As far as the principle as to the value of the identification of a person on the basis of photographs by a witness during the investigation

and then before the court, without there being a test identification parade, is concerned, this question is considered by the Hon'ble Apex Court in **Malkhan Singh & others Vs. State of Madhya Pradesh** where the Hon'ble Apex Court laid down that:-

"it is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure, which obliges the investigating agency to hold, or confers a right upon the accused to claim, a test identification parade. They do not constitute substantive evidence and these

parades are essentially governed by section 162 of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact."

696. Similarly in **Suresh Chandra Bahri Vs. State of Bihar, 1995 Supp. (1) SCC 80: 1994 (3) RCR (Cr). (SC)** the Hon'ble Apex Court held that:-

"it is well settled that substantive evidence of the witness is the evidence in the court but when the accused person is not previously known to the witness concerned then identification of the accused by the witness soon after his arrest is of great importance because it furnishes an assurance that the investigation is proceedings on right lines in addition to furnishing corroboration of the evidence to be given by the witness later in court at the trial. From this point of view it is a matter of great importance for the investigating agency and for the accused and a fortiori for the proper administration of justice that such identification is held without avoidable and unreasonable delay after the arrest of the accused. It is in adopting this course alone that justice and fair play can be assured both to the accused as well as to the prosecution.

697. Thereafter the Hon'ble Apex Court further observed:-

"But the position may be different when

the accused or a culprit who stands trial had been seen not once but for quite a number of times at different point of time and places which fact may do away with the necessity of a TI parade."

698. Similarly the Hon'ble apex Court in **Umar Abdul Shakur Versus Intelligence Officer, NCB, AIR 1999 SC, page 2562**, the Hon'ble apex Court further held that:-

"there is no legal provision which inhibits the identification of an accused by photo graphs and the law laid down by the Hon'ble High Court in Kartar Singh Vs. State of Punjab, 1994 CrL.Law Journal, page 3139 which struck down Section 20 of the TADA Act , 1987 was also clarified that identification of an accused only on the basis of photo graph as provided u/s 22 of the TADA Act is bad but if a witness appears in the witness box during the trial and correctly identify the accused then the court take into consideration the fact that during the investigations the photo graph of the accused was shown to the witness and he identified that person as the one whom he saw at the relevant time and in those cases the identification based on the photo graphs when corroborated by substantiated evidence makes it as admissible in evidence."

699. Even in **D. Gopal Krishanan Versus Sadanand Nayak, AIR 2004, Supreme Court, page 4965**, an authority relied upon by the defence, the Hon'ble Apex Court held that:-

"there are no statutory guidelines in the matter of showing photographs to the witnesses during the stage of investigation. But nevertheless, the police is entitled to show photo graphs to confirm whether the investigation is going on in the right direction. During the course of the investigation. If the witness had given the identifying features of the assailants, the same could be confirmed by the Investigating Officer by showing the photographs of the suspect and the Investigating Officer shall not first show a single photographs but should show more than one photograph of the same person, if available. If the suspect is available for identification or for video identification, the photo graph shall never be shown to the witness in advance."

700. Similarly in **Amit Singh Bhimamsing Thakur Versus State of Maharashtra reported in 1 (2007) Current Criminal Reports, Vol.1, page 221 (SC)**, the Hon'ble Apex Court again reiterated that:-

"It is trite to say that the substantive evidence is the evidence of identification in Court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in Court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of

a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in Court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. Thus rule of prudence, however, is subject to exceptions, when, for example, the Court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belongs to the stage of investigation, and there is no provision in the Code which obliges the investigating agency to hold or confers a right upon the accused to claim, a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. Failure to hold a test identification parade would not make inadmissible the evidence of identification in Court. The weight to be attached to such identification should be a matter for the Courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration."

701. Not even this in **Laxmi Pat Choraria Versus Stat of Maharashtra, AIR 1968, Supreme Court, page 938**, an authority relied upon by the defence, the Hon'ble Apex Court again while deciding the question of identity by photo graphs of accused persons held that:-

"Showing of a large number of a photo graphs to the witness and asking him to

pick out that of the suspect is proper procedure but showing a photo graph and asking the witness whether it is the offender is improper. And showing the photo graph of the suspect before identification makes the identification worthless.

702. Similarly in **Ravindra alias Ravi Bansi Gohar Vs State of Maharashtra, AIR 1998, Supreme Court, 3031** it was settled that:-

"Identification parades are held ordinarily at the instance of the investigating officer for the purpose of enabling the witnesses to identify either the properties which are the subject matter of alleged offence or the persons who are alleged to have been invoked in the offence. Such tests or parades, in ordinary course, belong to investigation stage and they serve to provide the investigating authorities with material to assure themselves if the investigation is proceeding on right lines. In other words, it is through these identification parades that the investigating agency is required to ascertain whether the persons whom they suspect to have committed the offence were the real culprits."

703. Similarly in **Ramanbhai Naranhai Patel and others Versus State of Gujarat (2000) 1 SCC, 358**, the Hon'ble Apex Court laid down that:

"Failure to hold test identification parade, which should be held with reasonable despatch, does not make the evidence of identification in Court

inadmissible rather the same is very much admissible in law. Question is what is its probative value ? Ordinarily identification of an accused for the first time in court by a witness should not be relied upon, the same being from its very nature, inherently of a weak character, unless it is corroborated by his previous identification in the test identification parade or any other evidence. The purpose of test identification parade is to test the observation, grasp, memory, capacity to recapitulate what a witness has seen earlier, strength or trustworthiness of the evidence of identification of an accused and to ascertain if it can be used as reliable corroborative evidence of the witness identifying the accused at his trial in Court. If a witness identifies the accused in court for the first time, the probative value of such uncorroborated evidence becomes minimal so much so that it becomes, as a rule of prudence and not law, unsafe to rely on such a piece of evidence."

704. Similarly the Hon'ble Apex Court in case of **Mehtab Singh Vs State of M.P, 1975 (3) SCC, page 407**, the Hon'ble Apex Court held that:

"No test identification parade is called for and it would be waste of time to put him up for identification if the victim mentions name of the accused in the first information report or he is known to the prosecution witnesses from before.

705. Similarly in **Sajjan Singh Versus Emperor**,

AIR 1945 Lahore 48, the Hon'ble Apex Court held that:

"If an accused person is already well known to the witnesses, an identification parade would of course, be only a waste of time. If, however, the witnesses claim to have known the accused previously, while the accused himself denies this, it is difficult to see how the claim made by the witnesses can be used as reason for refusing to allow their claim to be put to the only practical test. Even if the denial of the accused is false no harm is done and the valuer of the evidence given by the witnesses may be increased. It is true that it is by no means uncommon for persons who have been absconding for a long time to claim an identification parade in the hope that their appearance may have changed sufficiently for them to scape recognition. Even so, this is not in itself a good ground for refusing to allow any sort of test to be carried out. It may be that the witnesses may not be able to identify a person whom they know by sight owing to some change of appearance or even to weakness of memory, but this is only one of the facts along with many others, such as the length of time that has elapsed, which will have to be taken into consideration in determining whether the witnesses are telling the truth or not.

706. Not even this, in the case of **Jadunath Singh and another Versus The State of U.P. (1970) 3 SCC 518**, a three Judges of Bench of the Hon'ble High Court after referring to the many decisions observed that:-

"It seems to us that it has been clearly laid down by the Hon'ble High Court in

Parkash Chand Sogani Vs. The State of Rajasthan (Supra), that the absence of test identification in all cases is not fatal and if the accused persons is well-known by sight it would be waste of time to put him up for identification. Of course if the prosecution fails to hold an identification on the plea that the witnesses already knew the accused well and it transpires in the course of the trial that the witnesses did not know the accused previously, the prosecution would run the risk of losing its case. It seems to us that if there is any doubt in the matter the prosecution should hold an identification parade specially if an accused says that the alleged eye witnesses did not know him previously. It may be that there is no express provision in the Code of Criminal Procedure enabling an accused to insist on identification parade but if the accused does make an application and that application is turned down and it transpires during the course of the trial that the witnesses did not know the accused previously, as pointed out above the prosecution will, unless there is some other evidence, run the risk of losing the case of this point."

707. The Hon'ble Apex Court after referring to the evidence adduced on behalf of the prosecution came to the conclusion that as accused who was known to the prosecution witness from before, identification by witnesses in the court was not affected on the ground that he was not known."

708. Similarly in **Surendra Narain alias Munna Pandey (supra)**, the Hon'ble Apex Court after

observing the entire case law again observed that:

"On a perusal of the above rulings, it is clear that the failure to hold the test identification parade even after a demand by the accused is not always fatal and it is only one of the relevant factors to be taken into consideration along with the other evidence on record. In the claim of the ocular witnesses that they knew the accused already is found to be true, the failure to hold a test identification parade is inconsequential."

709. As far as the law relating to identification of an accused for the first time in the court without their being any corroboration whatsoever and that it can form sole basis for the conviction of an accused is concerned in **Budh Sain and another Vs. State of U.P., 1970(2) SCC, page 128**, the Hon'ble Apex Court held that:-

"There are certain exceptions to the rule that the identification of the accused for the first time is not admissible as an evidence and one of these exceptions is that when the court is impressed by a particular witness on whose testimony it can safely rely without such or other corroboration if that witness had any particular reason to remember about the identity of that accused and secondly where the witness had a chance to interact with the accused or that in a case where the witness had an opportunity to notice the distinctive features of the accused which lends assurance to his testimony in the court and in these circumstances, the

evidence of identification in court for the first time by such a witness can not be thrown away merely because no test identification parade was held.

710. Lastly the Hon'ble Apex Court in **Dana Yadav alias Dahu and others Vs. State of Bihar, AIR 2002 Supreme Court, 3325**, after considering the entire case law and the matter in dispute laid down the following principles:-

a) If an accused is well known to the prosecution witnesses from before, no test identification parade is called for and it would be meaningless and sheer waste of public time to hold the same.

b) In cases where according to the prosecution the accused is known to the prosecution witnesses from before, but the said fact is denied by him and he challenges his identity by the prosecution witnesses by filing a petition for holding test identification parade, a Court while dealing with such a prayer, should consider without holding a mini inquiry as to whether the denial is bona fide or a mere pretence and/or made with an ulterior motive to delay the investigation. In case Court comes to the conclusion that the denial is bona fide, it may accede to the prayer, but if however, it is of the view that the same is a mere pretence and/or made with an ulterior motive to delay the investigation, question for grant of such a prayer would not arise. Unjustified grant of refusal of such a prayer would not

necessarily enure to the benefit of either party nor the same would be detrimental to their interest. In case prayer is granted and test identification parade is held in which a witness fails to identify the accused, his so-called claim that the accused was known to him from before and the evidence of identification in Court should not be accepted. But in case either prayer is not granted or granted but no test identification parade held, the same ipso facto can not be a ground for throwing out evidence of identification of an accused in Court when evidence of the witness, on the question of identity of the accused from before, is found to be credible. The main thrust should be on answer to the question as to whether evidence of a witness in Court to the identity of the accused from before is trustworthy or not. In case the answer is in the affirmative, the fact that prayer for holding test identification parade was rejected or although granted, but no such parade was held, would not in any manner affect the evidence adduced in Court in relation to identity of the accused. But if, however, such an evidence is not free from doubt, the same may be a relevant material while appreciating the evidence of identification adduced in court.

c) Evidence of identification of an accused in Court by a witness is substantive evidence whereas that of identification in test identification parade is, though a primary evidence but not substantive one, and the same can be used only to corroborate identification of accused by a

witness in Court.

d) Identification parades are held during the course of investigation ordinarily at the instance of investigating agencies and should be held with reasonable despatch for the purpose of enabling the witnesses to identify either the properties which are subject matter of alleged offence or the accused persons involved in the offence so as to provide it with materials to assure itself if the investigation is proceeding on right lines and the persons whom it suspects to have committed the offence were the real culprits.

e) Failure to hold test identification parade does not make the evidence of identification in Court inadmissible rather the same is very much admissible in law, but ordinarily identification of an accused by a witness for the first time in Court should not from its very nature inherently of a weak character unless it is corroborated by his previous identification in the test identification parade is a check valve to the evidence of identification in Court of an accused by a witness and the same is a rule of circumstances only, as discussed above, evidence of identification for the first time in Court, without the same being corroborated by previous identification in the test identification parade or any other evidence, can form the basis of conviction.

g) Ordinarily, if an accused is not named in the first information report, his identification by

witnesses in Court, should not be relied upon, especially when they did not disclose name of the accused before the police, but to this general rule there may be exceptions as enumerated above."

EVIDENTIARY VALUE OF THE DISCOVERY OF THE ABODES AND HIDEOUTS AND IDENTIFICATION OF THE SAME VIS-A-VIS RECOVERIES MADE ON THE BASIS OF DISCLOSURE OF ACCUSED PERSONS.

711. One of the material circumstances relied upon by the prosecution, against accused Jagtar Singh Hawara and Balwant Singh, to link them with conspiracy and its execution, is that after the commission of crime, both these accused persons escaped and stayed at different places under assumed names to conceal their identity and when they were arrested, on the basis of disclosure statement made by them, various incriminating articles were recovered and they also identified all those places, where they reside; from where they made telephone calls and the places and the shops from where they purchased the articles for preparation of belt bomb and got stitched the belt bomb and Police uniforms.

712. The evidentiary value of above facts was considered by the Hon'ble Apex Court in **State Vs. Navjot Sandhu's case (Supra)**, and it was held that the act & conduct of the accused persons after the commission of crime till their arrest relating to

the discovery of abodes or hideouts of the accused persons, where they stayed and the recovery of various incriminating articles therefrom and identification of all those places is admissible in evidence as their conduct under Section 8 of the Evidence Act has close nexus with fact in issue.

713. This question was also considered by the Hon'ble Apex Court in **Parkash Chand Vs. State, AIR, 1979, Supreme Court, page 400**, in the following words:-

"There is a clear distinction between the conduct of a person against whom an offence is alleged, which is admissible under Section 8 of the Evidence Act, if such conduct is influenced by any fact in issue or relevant fact and the statement made to a Police Officer in the course of an investigation which is hit by Section 162 Criminal Procedure Code. What is excluded by Section 162 Criminal Procedure Code is the statement made to a Police Officer in the course of investigation and not the evidence relating to the conduct of an accused person (not amounting to a statement) when confronted or questioned by a Police Officer during the course of an investigation. For example, the evidence of the circumstance, simpliciter, that an accused person led a police officer and pointed out the place where stolen articles or weapons which might have been used in the commission of the offence were found hidden, would be admissible as conduct, under Section 8 of the Evidence Act, irrespective of whether any statement by the accused contemporaneously with or antecedent to

such conduct fall within the purview of Section 27 of the Evidence Act."

714. This very principle was also settled by Hon'ble Apex Court in **Himachal Pradesh Administration Vs. Om Parkash, AIR 1972, Supreme Court, page 972 (Supra)**, where the Hon'ble Apex Court further held that:-

"Even apart from the admissibility of the information under Section, the evidence of the Investigating Officer and the Panchas that the accused had taken them to PW 11 (from whom he purchased the weapon) and pointed him out and as corroborated by PW 11 himself would be admissible under Section 8 as 'conduct' of the accused."

715. Similarly in **State Vs. Navjot Sandhu's case (supra)**, the Hon'ble Apex Court reiterated this proposition with the following observations:-

"We have already noticed the distinction highlighted in **Prakash Chand's case (supra)** between the conduct of an accused which is admissible under Section 8 and the statement made to a Police Officer in the course of an investigation which is hit by Section 162 Cr.P.C. The evidence of the circumstance, simplicitor, that the accused pointed out to the police officer, the place where stolen articles or weapons used in the commission of the offence were hidden, would be admissible as 'conduct' under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct, falls within the purview of Section 27."

716. In the light of above discussed legal proposition of law on various aspects involved in this case, let the factual aspect of the case be considered to conclude the entire matter.

717. Keeping into consideration the fact that the case of prosecution is based on the different acts played by the different accused persons at different times but to achieve the same conspired objective and in prosecution of their conspiracy either jointly or in groups or individually, let us now take the case each of the accused person, one by one by as per the evidence alleged against him to link him with the conspiracy and its execution.

THE CASE AGAINST DECEASED DILAWAR SINGH

718. As held earlier, it is proved on the file beyond any shadow of doubt that it was accused Dilawar Singh, who being a 'Human Bomb' detonate himself near deceased Beant Singh, killing him and 16 other persons. As such this fact itself proves that he was part and parcel of this conspiracy.

719. At the same time, there are some more circumstances which further fortifies the connection of Dilawar Singh with this conspiracy.

720. **First** of all, PW-99 Chamkaur Singh, **real**

brother of Dilawar Singh, has deposed that on 31.8.1995, when Dilawar Singh and Balwant Singh left his house, Dilawar Singh disclosed that he is going to do a big task and PW-99 should run away. He further deposed that he is fully satisfied that his brother was involved in this conspiracy.

721. **Secondly**, when PW-237 searched the native house of deceased Dilawar Singh at Guru Nanak Nagar, Patiala, he found a book in Punjabi Article P-119 along with two group photographs of Dilawar Singh with two other accused persons and on the last page of book P-119, there was a sketch of belt mark X, which has been used by Dilawar Singh for stitching belt. PW-85, G.D.Achint, an independent witness, who was associated during the search of house of Dilawar Singh also corroborated this aspect and deposed that he was a member of the police party which went to the house of Dilawar Singh along with one more independent witness and after breaking open the lock, when the search was conducted, a book Article P-119 along with the photograph of Dilawar Singh was recovered and taken into possession vide memo Ex.P-85/1.

722. **Thirdly**, PW-79 has also identified the photograph of Dilawar Singh, Mark XXXX as the person, who accompanied Balwant Singh on 25.8.1995. Similarly PW-76 also deposed that on 1.7.1995 accused Balwant Singh along with his companion

Dilawar Singh came to his shop for stitching of the police uniforms and he noted their measurements on the bill-cum-measurement book Ex.P-76/1 and the carbon copy of that counter foil is Ex.P-76/1-A on which he recorded the measurement. He further deposed that on 3.7.1995 both of them came again and took the delivery of the uniforms. He also identified the photograph of deceased Dilawar Singh Ex.PW-76/3.

723. **Fourthly,** even accused Jagtar Singh Tara (since proclaimed offender) in his confession Ex.PW86/6 admitted that accused Dilawar Singh was part and parcel of this conspiracy and he acted as a human bomb. All these facts are admissible against Dilawar Singh, as per the provisions of Section 30 of the Indian Evidence Act, as these have been further corroborated and supported by the other circumstantial evidence brought on record.

724. Then we have the testimony of PW-51, Surinder Shama, painter, who also deposed that accused Lakhwinder Singh along with accused Balwant Singh and Dilawar Singh came to his shop with the car for the change of its colour to 'off-white' and then from 26.8.1995 to 30.8.1995, they visited his shop in that connection and he categorically deposed and identified that accused Dilawar Singh was one of the other person and he identified his photographs and further deposed that on 29th and

30th August, 1995, it was accused Dilawar Singh and Balwant Singh, who came to his shop to take the delivery of the car. Then PW-114, Dalbir Singh alias Maula also stated so. Besides this, associations of deceased Dilawar Singh with the other accused persons is also proved to link him with the conspiracy from the evidence of PW-69, PW-95, PW-102, PW-111, PW-113 and other witnesses. Last but not the least, Balwant Singh accused in his confession, Ex.PW-65/F as well as in the various applications filed in the court during the trial, admitted that Dilawar Singh was part and parcel of this conspiracy and both of them conspired together and killed deceased Beant Singh.

725. Thus from the above discussed evidence, it is proved that deceased Dilawar Singh was part and parcel of this conspiracy and he dared to act as a human bomb and detonate himself and killed Beant Singh along with 16 other innocent persons but fully knowing that with kind of explosive device and modes operandi, it was definite that loss of life and property will be very extensive. However, there is another side of this matter, which shows that from the entire evidence of prosecution, it is established that all the accused persons, who will be found to have been involved in the conspiracy, and helped each other to fulfill their common object of killing of S.Beant Singh, will also be liable for abetment and instigation which leads to

deceased Dilawar Singh to kill himself by working as a human bomb, for which they are required to be punished separately which will be decided after completing the entire discussion on merits and after knowing the involvement of all the accused in this conspiracy.

THE CASE AGAINST ACCUSED BALWANT SINGH

726. While considering the involvement of accused Balwant Singh, which is not otherwise disputed by him, it would be expedient to consider the case of accused Jagtar Singh Hawara also because such a course will help to avoid the repeating of evidence and would be advantageous as the role of both these accused persons is co-related and joint from the beginning till the execution of the conspiracy and also thereafter during their escape till their arrest.

727. Accordingly after considering the entire evidence of prosecution on this aspect, it comes out that, the prosecution has proved the following circumstances against both accused Balwant Singh and Jagtar Singh Hawara, which are sufficient to say that they were part and parcel of this conspiracy, which was initially made by them with their co-accused deceased Dilawar Singh and was further initiated by accused Jagtar Singh Tara and then executed by them with the help of some more

accused persons and who they are, is the next point for consideration.

CIRCUMSTANCE NO.: 1.

Confession before PW-65,

728. As far as, accused Balwant Singh is concerned, as discussed and held earlier, this accused had already confessed his guilt but he denied making of the confession, Ex.PW65/F. However, it is already held that the confession made by accused Balwant Singh, Ex.PW65/F is true and voluntarily made. As such, let us consider the evidence of the prosecution concerning to this accused, to know whether it is corroborated by the evidence led by the prosecution and to see what is the effect of retraction of confession by this accused on its evidentiary value against him as well as against the other accused persons, keeping in view the principle of law discussed above.

729. Before taking evidence of prosecution on this point let us consider the implications of section 10 of Evidence Act as far as both these accused persons are concerned. As per the proposition of law discussed above, as far as the application of Section 10 of the Evidence Act to the case in hand is concerned, after scanning the entire evidence of prosecution, it comes out that

the prosecution could not establish that after the execution of the conspiracy, all the accused persons continued to conspire with each other.

730. However, as far as accused Balwant Singh, is concerned, even after commission of this crime, when accused Balwant Singh escaped from Chandigarh, he continued to have contacts with accused Jagtar Singh Hawara and one of the absconding accused Kuldip Singh & Ram Singh and both of them had stayed together at some places in order to escape arrest which shows that both of them remained in touch with each other and further conspired to avoid arrest.

731. As such, as far as accused Balwant Singh and Jagtar Singh Hawara is concerned, the confession made by accused Balwant Singh can be taken into consideration as substantive evidence even against accused Jagtar Singh Hawara also under section 10 of the Evidence Act. However, as far as the remaining accused persons are concerned, the confession made by accused Balwant Singh, Shamsher Singh and Jagtar Singh Tara cannot be treated as substantive evidence against them as per the proposition of law concluded in **State Vs. Navjot Sandhu's case supra**.

732. In this regard in **State of Maharashtra Vs. Damu V (2000) S.L.T.194** the Hon'ble Apex Court

while taking into consideration the law laid down in ***State of Gujarat Vs. Mohd. Atik's case (supra)*** held that what the accused have spoken to each other in reference to their conspiracy, as could be gathered from the confessions of the co-accused, can be regarded as relevant facts falling within the purview of Section 10 of the Evidence Act and the same can be used to ascertain what was said or done or written between the conspirators for a limited purpose. This very principle was also reiterated in ***State Vs. Nalini's case (supra)***.

733. Thus, the conclusion on the above score is that the confessional statement made by an accused after his arrest, if admissible and reliable, can be used against confessor as substantive evidence but its use against the other accused would be limited only for the purpose of corroboration of other evidence, as per the provision of Section 30 of Evidence Act and it can also be used to lend assurance to other evidence against the co-accused.

734. The other principle which comes out from the legal proposition, mentioned above, is that even a retracted confession can be made basis to convict a person, provided, it was true and was voluntarily made and has been corroborated on general facts, as settled by the Hon'ble Apex Court in ***Parmanand Pegu's case (supra)***. Keeping in view the above settled law, let us consider the evidence

adduced by prosecution and compare the same with the confession of accused Balwant Singh to conclude that it is true and not retracted legally as per the principle laid down by the Hon'ble Apex court in **Shankaria's case (supra)**.

735. As stated earlier the making of confession by Balwant Singh is proved to be in favour of prosecution. At the same time, accused Balwant Singh has admitted his guilt and killing of Beant Singh in conspiracy with deceased Dilawar Singh. As far as the retraction is concerned, the accused Balwant Singh moved an application on 20.2.1996 and alleged that he never made the said confession either to the CBI or before any Magistrate. However, it is proved that the copy of challan is already with this accused in the year 1995 itself but he never moved an application for retraction before the Committing Magistrate or thereafter when the case was committed to the Court of Sessions.

736. Even otherwise, while retracting from the confession, he has nowhere alleged that any inducement, threat or pressure was made to get that confession and also what are the reasons, what to talk of justifiable reasons and how it is supported by any circumstance, which must be a material one, specially when it settled law that time is essence to do so.

737. At the same time, despite opportunity being granted, the accused Balwant Singh failed to cross examine PW-65, Mr.V.K.Maheshwari, Metropolitan Magistrate, who has recorded his confession and who has categorically stated that before recording the confession of accused Balwant Singh, he was fully satisfied that he is going to make the confession without any pressure, threat, inducement, torture etc. As such no valid ground exists to retract from the same and when it is corroborated generally and broadly. Even the cross examination of this witness by the counsel for the other accused person could not elicit anything favorable to say that the confession is not true and voluntarily made.

738. Above all, the confession of guilt made by accused in this case itself shows that this assassination is not possible by Balwant Singh and deceased Dilawar Singh alone, except as per a planned conspiracy involving many more person as admitted by accused Jagtar Singh Tara including accused Jagtar Singh Hawara and if it is so, the facts disclosed by accused Balwant Singh in his confession is voluntarily made and there is no legal retraction in the eyes of law. On the contrary, it comes out that the only intention on the part of Balwant Singh while doing so was to help his co-accused.

739. Even the legality and correctness of the confession has not been disputed by Balwant Singh by not cross examining PW-65. Even when question no.249 and 250 was put to the accused Balwant Singh regarding making of confession, Ex.PW65/F, he alleged that he do not remember, whereas later on in answer to question no.253 he admitted that in his confessional statement, Ex.PW65/F, he disclosed that he had adopted Jaswant Singh and his daughter Kamaldeep Kaur as his father and sister and this fact goes to show that this accused had suffered the confession.

740. In **Shankaria Vs. State of Rajasthan's case (Supra)**. It was settled by the Hon'ble Apex Court that where the accused, while retracting his confession, did not say that he was tutored by the Police to make confession nor he gave any explanation and the confession shows that there was nothing improbable or unbelievable in the same, on the contrary, the same is appeared to be spontaneous, containing all the details about the manner of the commission of crime, which only the perpetrator of the crime could know and lastly the confession is further corroborated in several material particular from reliable circumstantial evidence, it is admissible and sufficient to bring home the charge to the accused. This very proposition of law was again reiterated by the Hon'ble Apex Court in **State of Maharashtra Vs. Damu**

and others V(2000) S.L.T. 194.

741. Accordingly in the present case, the further perusal of the evidence of prosecution shows that when the facts stated in the confession were compared with the evidence, in the light of surrounding circumstances and probabilities of the case, the confession seems to be a probable list of events and it proves the previous act & conduct of accused Balwant Singh leading to planning of conspiracy, its preparation and its execution and it also proves the subsequent act of the accused during the time, he remained escaped and stayed at various places and the same is also corroborated by the extra judicial confession suffered by him and there is nothing improbable or unbelievable and it also appears to be spontaneous account, giving vivid details about the manner of commission of the crimes in question, which only the perpetrator of the crime could know. Thus, it is substantive evidence against accused Balwant Singh and it is also duly corroborated and thus this confession is sufficient alone, to convict him.

CIRCUMSTANCE NO. 2. :

Confession before the court.

742. The next and the foremost circumstance, which itself is sufficient to convict the accused Balwant Singh, is his confession made before this

court on several occasions as discussed above in different parts of this judgement, and which proves beyond doubt that deceased Beant Singh was killed by deceased Dilawar Singh by acting as Suicide bomber in conspiracy with accused Balwant Singh and Jagtar Singh Hawara and the other accused and no evidence is required to rely upon this circumstance, specially when this accused has further admitted that the facts disclosed by him to PW-95, Tejinder Singh and as stated on oath by him, are correct as far as his and role of other accused persons is concerned.

CIRCUMSTANCE NO.3 :

Association of accused Balwant Singh and Jagtar Singh Hawara with other accused persons including accused assassin Dilawar Singh, Lakhwinder Singh, Jagtar Singh Tara and Gurmit Singh.

743. The next circumstance which goes to corroborate the facts stated in the confession by accused Balwant Singh, is his association with the other accused persons, which is also a material fact and which will also be a circumstance against other accused persons also. As such, the discussion of this aspect is being done to see the association of all the accused persons with each other and its importance and link with the conspiracy.

744. In this regard, it is undisputed case of accused Balwant Singh that he joined Punjab Police in the year 1997 and lastly he was a gunman attached with Bhushan Sirhandi, a Press Reporter of a Hindi Daily. Even PW-62, C.Sukhwinder Singh, who has brought the service file of accused Balwant Singh, Ex.PW62/A, has also proved the appointment and last posting of accused Balwant Singh as gunman with Bhushan Sirhandi, a Press Reporter as per the order, copy of which is, Ex.PW62/C.

745. Although, during his statement u/s 313 Cr.P.C., he denied this fact but in view of the testimony of PW-62, C. Sukhwinder Singh and PW-60, Raju Tamir Haran, grandson of Bhushan Sirhandi, this fact is proved and the accused Balwant Singh has not cross examined him to refute this fact, on the contrary, he gave a writing, Ex.CD/1, in his own hand writing, saying that whatever has been stated by PW-60, is correct.

746. As per PW-60, accused Balwant Singh, was working as gunman with his maternal grand father, Bhushan Sirhandi and he used to remain on duty from morning to evening. He also deposed that accused Balwant was having a scooter, Ex,P77. He further deposed that he also know deceased Dilawar Singh, who was a friend of Balwant and used to visit him in their office and he also identified the photograph Of Dilawar, mark YY, YY/1 to YY/5.

747. Not even this, when questions number 76 to 79 in this regard were put to accused Balwant Singh, he admitted that he had been attached as Gunman with Bhushan Sirhandi for many years and protected him as a member of family and he again confessed the killing of Beant Singh and also stated that whatever has been stated by PW-60 in the court is correct.

748. At the same time in answer to question No.31 and 32, the accused Balwant Singh also admitted that as stated by PW-99, Chamkaur Singh brother of deceased Dilawar Singh, he was a friend of Dilawar Singh. Even otherwise it is undisputed admission of accused Balwant Singh that he and deceased Dilawar Singh were involved in this blast.

749. Although, Balwant Singh has denied his association with accused Lakhwinder Singh and Gurmeet Singh, being residents of same locality of the same city and being old friends and school mates but this fact is not disputed by the other accused persons and which is further corroborated by witnesses PW-54, Deepinder Mehta, PW-95, Tejinder Pal Singh, PW-113, Surinder Kumar, PW-114, Dalbir Singh @ Maulla, PW-69, Madanjit Singh @ Channa and this aspect is also proved in view of the testimony of PW-99.

750. Not even this PW-102, Kuljeet Singh, who is an old friend of accused Balwant Singh, as he had also joined in G.R.P. at Patiala, also deposed that he was also knowing all other friends of Balwant Singh including accused Gurmeet Singh, PW-95, Tejinder Pal Singh and some other friends named by him. He further deposed that on 01.09.1995 at about 9.05 a.m., accused Balwant Singh came to his quarter. He was clean shaven at that time and was perplexed and when he questioned him, accused Balwant Singh disclosed him that he and his companions had killed Beant Singh, when Dilawar Singh, acting as a human bomb, detonated himself near the Beant Singh and accused Jagtar Singh Tara had drove Dilawar Singh in an Ambassador car to Civil Secretariat and that car had remained parked there as the person who had to drive away the car had fallen ill. He also disclosed that RDX has been procured from Pakistan through Jagtar Singh Hawara and Gurmeet Singh had helped them in manufacturing the bomb.

751. One more material witness of the prosecution on this aspect is PW-95, Tejinder Pal Singh, who is an old friend of accused Balwant Singh, being the resident of same Guru Nanak Colony and being his child-hood friend and he accordingly deposed that accused Balwant Singh is his child-hood friend and he knows him and his friends including deceased Dilawar Singh, Lakhwinder Singh

and Gurmeet Singh, who were also identified by him in the court.

752. After that he deposed that as and when he came to Patiala on his vacations, he used to meet accused Balwant Singh and Dilawar Singh and even in the month of July, 1993 both of them visited him at Nagpur and stayed with him where he was residing along with his other friends including PW-94, Gurpreet Singh and all of them had gone to Nanded Sahib and Panchmari etc.

753. He further deposed that in June, 1995, when he was at Patiala, he met Balwant Singh and deceased Dilawar Singh as well as Deepinder Mehta, another friend of all of them. He also deposed that while leaving Patiala, he went to the house of Balwant Singh, where accused Jagtar Singh Hawara was also present and accused Balwant Singh introduced him with him.

754. He further deposed that on 2.9.1995 accused Balwant Singh reached at their house at Nagpur and disclosed him that on 31.8.1995, he, Gurmeet Singh, Dilawar Singh, Lakhwinder Singh, Jagtar Singh and other companions had assassinated Beant Singh, Chief Minister, Punjab in the Civil Secretariat in which Dilawar Singh had served as a human bomb.

755. He further deposed that accused Balwant Singh further stated that the belt bomb was prepared in the room of Gurmeet Singh and an Ambassador car, which was arranged by accused Jagtar Singh Hawara and his companions from Delhi, was used to reach the Secretariat, by repainting the same into white colour from the friend of Lakhwinder Singh at Chandigarh and on reaching Secretariat, he wrote a Poem for Dilawar Singh. Not even this, accused Balwant Singh also disclosed to them that this assassination was plotted and engineered at the instance of Wadhawa Singh and Mehal Singh.

756. Not even this in view of testimony of PW-213, Karamjit Singh and PW-214, Santokh Singh, it is also proved that the accused Gurmeet Singh was also a close friend of deceased Dilawar Singh and Lakhwinder Singh. Similarly testimony of PW-69, Madanjit Singh @ China further proved that the deceased Dilawar Singh was also close friend of Lakhwinder Singh as he was working as Special Police Officer in Punjab Police.

757. Not even this, the prosecution has also examined another witness, PW-111, Mohan Pal, resident of Ratuali Village in Himachal Pardesh, who deposed that at one point of time, deceased Dilawar Singh, accused Lakhwinder Singh and Balwant Singh came to his village and stayed together in

June, 1995 and even PW-113, Surinder Kumar has corroborated this fact. Even PW-114, Dalbir Singh @ Maulla has also corroborated this version.

758. Even PW-159, Gurbachan Singh deposed that accused Dilawar Singh used to visit Lakhwinder Singh and they used to take liquor together. PW-62 C.Sukhwinder Pal Singh, who was also in Punjab Police and who was in the Security of CM also deposed that accused Lakhwinder Singh was working as Munshi in the Security Wing of Punjab Police on 31.8.1995 and he was clean shaven and deceased Dilawar Singh was the friend of Lakhwinder Singh. Not even this when question No. 10 was put to accused Lakhwinder Singh and Gurmit Singh in this regard, they admitted it.

759. All these witnesses have also identified all these accused persons in the court and also identified their photographs. Since all these witnesses were knowing these accused persons personally, as such their identification of the accused persons in the court is a material evidence even if we ignore the identity by way of photographs.

760. One more fact, which is material at this stage is that during or prior to the conspiracy, accused Lakhwinder Singh was clean shaven whereas accused Balwant Singh was not having hairs but was

having a French cut beard and later on, both of them become baptised Sikhs but despite this, they were identified by the witnesses.

761. All these witnesses were duly cross examined by learned defence counsels with a explanation that they are procured witnesses and deposed falsely, as even for a moment, it is believed that accused Lakhwinder Singh, Gurmit Singh and Dilawar Singh were known to each other being residents of same locality and city, this alone cannot be made basis to say that they were part and parcel of this conspiracy.

762. But after going through the testimony of all these witnesses, coupled with other facts and circumstances, it comes out that, no doubt, the stand of all these witnesses regarding the association of all of them with each other is admittedly not parse sufficient to say that they were also members of this conspiracy but it also goes to show that since accused Balwant Singh and deceased Dilawar Singh were old friends and were known to each other and were having confidence in each other thus conspired together and later on, accused Jagtar Singh Hawara also associated himself with them with a obvious motive to use all of them to fulfill his motive to kill Beant Singh. But whether the association of other accused person with them was a consideration for conspiracy, will

be seen after the entire evidence.

CIRCUMSTANCE NO.4 :

***Meeting of Balwant Singh with absconding
accused Harjit Singh and Jagtar Singh
Hawara.***

763. Accused Balwant Singh in his confession, Ex.PW65/F disclosed that in the month of March/April, 1995, his old friend Harjit Singh, who is now settled in USA, and who is also accused in this conspiracy but absconding, came to India and met him and discussed with him about the atrocities committed by the Punjab police on the innocent persons on the instigation of Beant Singh the then Chief Minister, Punjab and who also decided to kill Beant Singh and Balwant Singh offered his services to do so provided necessary in puts are made available to him and on this, Harjit Singh assured all help to him for this task and Balwant Singh gave the telephone number of Bhushan Sirhindi for future contacts in this regard.

764. Thereafter sometime in early June 1995 Harjit Singh rang up Balwant Singh on the telephone of Bhushan Sirhindi, which was attended by PW-60, Raju Tamir Haran and told him that Balwant Singh should contact him for some work and Raju Tamir Haran passed on this message to Balwant Singh, who went to Delhi and met accused Harjit Singh alias

Mini Bawa.

765. No doubt, there is no direct evidence on the file to prove the factum of meeting of Balwant Singh with Harjit Singh at his house at Patiala but the remaining story is duly proved on the file from the testimony of PW-60, Raju Tamir Haran, who deposed that during the posting of Balwant Singh with his maternal grandfather, accused Balwant Singh used to have a Scooter, Ex.P77 and he further deposed that about 2-3 months prior to incident in question, he attended a telephone call for Balwant Singh and the caller identified himself as uncle of Balwant Singh and asked him to convey a message to Balwant Singh that he (Balwant Singh) should meet him at Gurudwara Seesh Ganj at New Delhi and on the next morning he conveyed this message to Balwant Singh.

766. He further deposed that after this Balwant Singh left for Delhi saying PW-60, that he is going to Delhi for getting his passport. As stated earlier, this witness has not been cross examined by accused Balwant Singh on this aspect. On the contrary, as per his writing Ex.CD/1, he admitted that whatever has been stated by PW-60 is correct. Above all even after the incisive cross examination by the defence counsels, his testimony remained unrebutted, specially when he has deposed only against accused Balwant, who admitted his version

as correct.

767. In addition to this PW-124, Jasbir Singh, Clerk of Gurudwara Seesh Ganj of Delhi and PW-125, Dalbir Singh, Sewadar of above Gurudwara deposed that on 19.6.1995 one Manjinder Singh along with other two persons stayed in room no.37 in the Gurudwara.

768. In addition to this accused Balwant Singh disclosed that when he went to Gurudwara Seesh Ganj, he met accused Manjinder Singh @ Bawaji, who took him to Surya Hotel, where he was introduced with accused Jagtar Singh Hawara and all of them discussed the plan to kill Beant Singh.

769. This fact is also proved on the file in view of testimony of PW-132, Vinod Kumar, Manager of the Surya Guest House, who when appeared in the witness box categorically deposed that on 23.6.1995, as per the entry Ex.PW132/7-A in the guest register, Ex.PW132/7, one Manjinder Singh stayed in their Hotel from 9.25 a.m to 1.00 a.m and at that time he was accompanied by another Sikh young man, who was later on identified by him as accused Jagtar Singh Hawara.

770. He further deposed that after some time another person, who was having small beard, visited Manjinder Singh, who was later on identified as

Balwant Singh. This witness further deposed that when CBI questioned him about this and some photographs were shown to him, out of those photographs, he had identified the photo graph, Ex.PW132/1 of accused Jagtar Singh Hawara, Ex.PW/132/2 of accused Balwant Singh and Ex.PW/132/3 of Manjinder Singh. During his testimony before the court he has also identified both these accused persons in the court.

771. Much has been argued by learned defence counsel as to the identity of accused Jagtar Singh Hawara and Balwant Singh by this witness after seeing the photographs, without conducting a test identification parade from this witness, during the investigations, alleging that this identification is no identification in the eyes of law as per the law laid down by the Hon'ble Apex Court in **Laxmi Pat Choraria Vs. State of Maharashtra's case (Supra)**.

772. However, after considering rival contentions, it comes our that the entire law as to the identification of the accused on the basis of photo graphs by the witnesses has already been discussed and it has been laid down by the Hon'ble Apex Court in **Laxmi Pat's case (Supra)**, that showing of large number of photographs to the witness and asking him to pick out that of the suspect is a proper procedure but showing a single

photograph and asking a witness whether it is of offender is improper, even if that suspect is later on identified by the witness.

773. However, later on in **Dana Yadav Vs. State of Bihar's case (Supra)** as mentioned earlier, this position is further clarified and it was held that even if no test identification parade was conducted, it itself is not a ground for throwing out the evidence of identification of the accused in court, when evidence of witness on this point is credible because the evidence of identity of an accused in the court is substantive evidence whereas identity during the test identification parade is not.

774. Even in a case where the witness has identified an accused for the first time in the court, the Hon'ble Apex Court held that it can be relied upon if it is proved that the witness has the occasion to see the accused and to interact with him and in this regard in **Budh Sen Vs. State of U.P's case (Supra)**, the Hon'ble apex Court laid down that when the court is impressed by a particular witness in whose testimony it can safely rely upon, without such other corroboration; if that witness had any particular reason to remember about the identity of that accused and where the witness had chance to interact with a accused or where the witness has an opportunity to notice the

distinctive features of the accused, which leads to the assurance to his testimony in the court, such an identification can be relied upon even without any test identification parade.

775. Similarly in a case of similar facts and circumstances based on conspiracy and circumstantial evidence, the Hon'ble Apex Court in ***Laxmi Raj Shetty Vs. State of Tamil Nadu 1988 Cr.L.J. 1783*** held that even when a witness identifies an accused for the first time in the court without any prior identification parade, such identification is admissible in evidence, where it is proved that such a witness had seen the photograph of the accused during the investigations and identified him to be the person involved.

776. Similarly in ***D.Gopal Krishanan's case (supra)***, the Hon'ble Apex Court held that there is no statutory guidelines in the matter of showing photographs to the witnesses during the stage of investigations. However, during the course of investigations, the police is entitled to show photographs to confirm whether investigation is going in the right direction and this can even be done by showing more than one photograph of the same person or suspect to the witness but if the suspect is available for identification or video identification, the photograph shall never be shown to the witness in advance.

777. Accordingly, in the present case, PW-132 has categorically stated that when the police visited his Hotel, some photographs were shown to him to identify the person, who stayed in the Hotel and from those photographs, he identified the three photographs of Manjinder Singh, Balwant Singh and Jagtar Singh Hawara Ex.PW132/1 to Ex.PW132/3. He has also identified accused Balwant Singh and Jagtar Singh Hawara in the court during his testimony and there is nothing in the record to show that photographs of these accused were shown to the witness prior to this testimony.

778. On the contrary, he identified these accused persons of his own and thereafter he also deposed about the identity of these accused on the basis of these photographs during the investigation. But by no stretch of imagination, it can be said that he identified the accused in the court only after seeing the photographs on that date.

779. On the contrary, during his cross examination, he deposed that about 12 to 15 photographs were shown to me and he further stated that the name of both these accused were already disclosed to him in January, 1996 and by that time neither accused Balwant Singh nor Jagtar Singh Hawara were arrested and as such there was no

question of arranging the test identification parade of them from this witness or the other witnesses, who were associated in this regard. Thus, the testimony of this witness is reliable on the identity of both these accused persons as no motive or enmity has been shown qua this witness to depose against the accused persons.

780. Not even this in **Umar Abdul Shakur Vs. Intelligence Officer's case (Supra)**, the Hon'ble Apex Court further held that there are no statutory guidelines or legal provisions in the matter of showing photographs to the witnesses during the stage of investigations and the identification of accused by photographs and while clarifying the provisions of Section 22 of the TADA Act, which permits the identity of the accused through photographs, it was held that this provision is bad but if the witness appears in the witness box during the trial and correctly identify the accused then that identification can be considered and if it is further corroborated by some evidence, the same is admissible in evidence.

782. Similarly, in the present case, the identity of the accused persons by PW-132, in the court after seeing the photographs in the year 1996, is admissible even if no test identification parade was conducted as it was not possible at that time. Thus this plea of learned defence counsel is

without any basis.

783. The next meeting which took place between accused Balwant Singh and Jagtar Singh Hawara was at the residence of Balwant Singh in Rattan Nagar, Patiala, some where in the first week of July, 1995, where they finalized the plan to kill S.Beant Singh with a human bomb as it was very difficult to kill him otherwise and later on both of them along with Dilawar Singh finalized this plan to kill Beant Singh with a human bomb. This fact is also duly disclosed by accused Balwant Singh in his confession Ex.PW-65/F, which is already held to be proved and voluntarily made.

784. In view of the above discussed legal and factual position, it is proved that accused Balwant Singh and Jagtar Singh Hawara met in Surya Guest House, Delhi and hatched a final conspiracy to kill Beant Singh with the help of a human bomb and discussed the security arrangements of Beant Singh and also the modalities to assassinate him and accused Balwant Singh offered the services of deceased Dilawar Singh in this regard and Dilawar Singh also agreed to do so, which further shows that the facts disclosed by accused Balwant Singh in his confession, Ex.PW65/F, in this regard are correct and true and duly corroborated from the evidence.

CIRCUMSTANCE NO.5 :

Act and conduct of accused Balwant Singh and Jagtar Singh Hawara during the preparations made by them and Identification of places from where accused Balwant Singh and Jagtar Singh Hawara others purchased various items used for the preparation of the belt bomb and for the purpose of execution of the conspiracy.

785. As stated by Balwant Singh in his confession, it is further proved on the file that as per their plan, accused Balwant Singh and accused Jagtar Singh Hawara made various preparations to fulfill their object.

786. In this regard, it is categorically deposed by PW-75 Jasbir Singh, who was having a tailoring shop in the A.C.Market, Patiala in the name and style of M/s Stitch Co. that he was knowing Balwant Singh, who used to visit him being a Punjab Police Constable and on 24.8.1995 accused Balwant Singh along with one more person, who was later on identified as accused Jagtar Singh Hawara, came to his shop and asked him to stitch a cloth belt alleging that the same is required for the mother of Jagtar Singh Hawara, who has undergone for an operation, for keeping a hot water bottle with her body.

787. As per this witness after that, accused

Jagtar Singh Hawara prepared a diagram of the proposed cloth belt and he also ordered for stitching of two pants for which he had purchased the cloth from his shop and he took the measurement of Jagtar Singh Hawara and noted the same in the measurement bill-book Ex.PW-75/A, carbon copy of which is Ex.PW-75/A-1.

788. He further deposed that as requested by the accused persons, he stitched the cloth belt and one pant on the same day as asked by them but they did not come to collect the same. Later on 25.8.1995 accused Balwant Singh came to his shop along with a clean shaven man and took the delivery of the one belt and a pant and ordered for stitching of one more belt for him and he selected green colour for the belt.

789. Accordingly he took the measurement of accused Balwant Singh and recorded the same in the same measurement slip Ex.PW-75/A-1 on its right hand side and he also ordered for one pant for which he noted the measurement Ex.PW-75/A-2.

790. He further deposed that he also stapled a sample of the cloth of the pant and belt with the same paper. Later on 27.8.1995 accused Balwant Singh along with Jagtar Singh Hawara came to his shop and took the delivery of one pant and one cloth belt. He also identified the green belt as

Article, Ex.P-97 and deposed that it is the same belt which was stitched by him and delivered to Balwant Singh.

791. He further deposed that when the CBI came to his shop, some photographs were shown to him and out of those photographs, he identified the photograph of Balwant Singh, Ex.PW-75/D and signed the same and also identified the photographs Mark WWWW and Mark WWWW/1 of the other person, who was a Kesh Dhari i.e. a Sikh gentleman and who had come with Balwant Singh, on 24.8.1995 and 27.8.1995. Not even this, he has reiterated that on the asking of the CBI, he had prepared the diagram of the belt on a paper and handed over to the CBI which is Ex.PW-75/C.

792. He further deposed that on 24.1.1996 he identified accused Jagtar Singh Hawara, who was in the custody of the CBI and whose photograph he identified as mark WWWW/1. Not even this, he has also identified accused Jagtar Singh Hawara in the court as the same person who had visited his shop with accused Balwant Singh on 24.8.1995 and 27.8.1995. He also identified the photograph of other person, who had accompanied accused Balwant Singh on 25.8.1995, as mark XXXX bearing his signatures Ex.PW-75/F.

793. During cross examination, he has denied

the suggestion of the learned defence counsel that he is deposing falsely on the asking of the CBI. When he was confronted about the hand writing of the copy of the diagram Ex.PW-75/C, he admitted that it contains his handwriting as all the words mentioned therein. As such the testimony of this witness remained unrebutted and there is nothing on the record to disbelieve him.

794. Similarly, PW-76 Amarjit Singh, another tailor master of Patiala, also deposed that he is running a tailoring shop in Tripuri Town, Patiala and knows accused Balwant Singh for more than 8-10 years. After identifying him in the court, he further deposed that on 1.7.1995 accused Balwant Singh along with his companion Dilawar Singh, came to his shop and asked for stitching of a Police uniform as he was also earlier used to stitch the same for Balwant Singh.

795. He further deposed that accordingly he took the measurement of both the accused persons on the bill-cum-measurement book Ex.PW-76/1 and as per the counter foil number 775, Ex.PW76/1-A, he noted the measurement of both the accused persons under their name one by one and later, on 3.7.1995 they took the delivery. After that, after about 10-15 days, accused Balwant Singh came and ordered for 5 more police uniforms of his size and after 4-5 days, he took the delivery of those uniforms.

796. He further deposed that he handed over the bill-cum-measurement book to the CBI and also identified the photograph of Dilawar Singh mark PW-76/3 and put his signatures as Ex.PW-76/4, in the token of identification of the same.

797. As usual accused Balwant Singh has failed to cross examine both these witnesses despite opportunity being granted, as such as held in **State of HP Vs. Thakur Dass's case (supra)** the stand of both these witnesses remained unrebutted. Even despite incisive cross examination of both these witnesses, by learned defence counsel for other accused persons, the testimony of both these witnesses, as to the visit of Balwant Singh and Jagtar Singh Hawara to their shop for the above mentioned work along with the identity of both of them remained unrebutted. Again no motive or enmity has been attributed qua them to depose falsely against these accused persons.

798. It is already held that the identity of accused persons by both these witnesses in the court, is duly admissible in evidence, specially when both these witnesses were already knowing accused Balwant Singh and specially when PW-75 stated that the other accused Jagtar Singh Hawara visited his shop two times and he noted his measurement and thus was having sufficient reasons

to identify him. At the same time as stated earlier PW-76 has also identified accused Jagtar Singh Hawara during the investigations and also through photographs.

799. Thus in view of the testimony of both these witnesses, it is held that both accused Balwant Singh and Jagtar Singh Hawara got stitched two belts, one of which was used by deceased Dilawar Singh as a belt bomb and the other one is Ex.P-97 which has been recovered from the dickey of the scooter of Balwant Singh and identified by PW-75 in the court, and police uniforms which they used for the commission of the crime i.e. to enter the Secretariat Building posing themselves to be police officials.

800. As per accused Balwant Singh, after preparing the belt bomb by Jagtar Singh Hawara in his room, when the same was shown to Dilawar Singh on 27.8.1995, they have decided to add some more splinters in the bomb to make it more lethal and for that, they went to the shop of a kabari in the Kabari Bazar and purchased some splinters and filled the same in the bomb. After that they also purchased a 9 bolt battery and a switch etc. for the circuit of the bomb. And this fact is also proved on the file with cogent reliable evidence.

801. Accordingly in the present case PW-248

S.N.Saxena, the Chief Investigating officer of this case, who has arrested the accused Balwant Singh, deposed that on 14.1.1996 after the arrest of this accused, he obtained the police remand and handed over the accused to PW-247.

802. According, PW-247 deposed that during the investigations he interrogated the accused Balwant Singh, who suffered two separate disclosure statements Ex.PW247/3 and Ex.PW247/4, in the presence of PW-212, Balwant Singh s/o Masha Singh, an independent witness from Patiala, disclosing that as per the plan prepared by him to kill Beant Singh, he purchased necessary articles to prepare the belt bomb including the ball bearings, a nine bolt battery, the cloth to make the belt got stitched from the tailor in the AC market and he can identify those shops.

803. Similarly, he also disclosed that they got stitched some police uniforms to gain entry in the Secretariat from a Tailor of Patiala and he can identify that shop. He also disclosed that on 28.8.1995 he along with Dilawar Singh took a taxi from Patiala and reached Mohali and he can identify that Maruti Van and the taxi stand.

804. Similarly, PW-247 further deposed that on 20.1.1996, accused Balwant Singh took the police party to Patiala and reached at the taxi stand on

the Maal road near Capital Cinema, Patiala and identified the same but he could not find the blue Maruti van, which was used by him to reach Mohali and a pointing out memo of this fact Ex.PW212/1 was prepared. Thereafter, accused Balwant Singh took the Police party to Dharampura Bazar and pointed out the shop of Arora Electronics from where he purchased the electrical articles, a switch etc and a pointing out memo Ex.PW212/3 was prepared.

805. He further deposed that thereafter accused Balwant Singh took the police party to AC market, Adalat Bazar, Patiala and pointed out the shop of tailor master from where he got the three pants stitched and Jasbir Singh, proprietor of this shop also identified accused Balwant Singh and confirmed this fact and a pointing out memo, Ex.PW75/B was prepared in this regard and the bill book of the tailor master was also taken into possession along with the cash memo.

806. This fact is also corroborated by PW-75 Jasbir Singh on all material aspects and he further deposed that on the asking of the Police, he prepared the rough sketch of the belts stitched by him, Ex.PW75/C and hand over the same to the Police and also identified the photographs of accused Jagtar Singh Hawara and Dilawar Singh.

807. As Per PW-247 thereafter, accused Balwant

Singh took the police party in a shop in the Kabari market, from where he purchased the splinters etc and a pointing out memo Ex.PW212/2 was prepared in the presence of owner of the shop and PW-212. Thereafter accused Balwant Singh led the police party to Tripari Town, Patiala and pointed out the shop from where Police uniforms were got stitched and the owner of that shop PW-76, Amarjit Singh also confirmed this fact and identified the accused Balwant Singh and a pointing out memo, Ex.PW-76/2 was prepared and the bill book, Ex.PW76/A along with the relevant cash memo, Ex.PW76/1-A was also taken into possession vide the same memo. This fact is duly proved on the file by PW-212, who corroborated the stand of the CBI in this regard.

808. PW-247 further deposed that after that the accused was brought to Chandigarh, where he pointed out the shop of PW-51, Surinder Sharma, from where car, DBA-9598 was got repainted.

At the same time despite opportunity being granted, accused Balwant Singh has not cross examined this witness. If it is so, as per the law laid down in **State of HP Vs. Thakur Dass's case (Supra)**, the testimony of this witness remained un rebutted.

809. Much has been argued by the learned defence counsel as to the admissibility the facts

stated by these witnesses alleging that these pointing out memos are not within the definition of discovery of material facts as required under section 27 of evidence act.

810. The above said issues have been directly considered by the Hon'ble Apex Court in **state (NCT of Delhi) Versus Navjot Sandhu, 2005, Cr1.L.J. 3950** and the Hon'ble Apex Court taken into consideration the entire case law held that:-

"The physical object might have already been recovered, but the investigating agency may not have any clue as to the "state of things" that surrounded that physical object. In such an event, if upon the disclosure made such state of things or facts within his knowledge in relation to a physical object are discovered, then also, it can be said to be discovery of fact within the meaning of Section 27.

"The other aspect is that the pointing out of a material object by the accused himself is not necessary in order to attribute the discovery to him. A person who makes a disclosure may himself lead the investigating officer to the place where the object is concealed. That is one clear instance of discovery of fact. But the scope of Section 27 is wider. Even if the accused does not point out the place where the material object is kept, the police, on the basis of information furnished by him, may launch an investigation which confirms the information given by accused. Even in such a case, the information furnished by the accused becomes admissible against

him as per Section 27 provided the correctness of information is confirmed by a subsequent step in investigation. At the same time, facts discovered as a result of investigation should be such as are directly relatable to the information."

"We have noticed above that the confessions made to a police officer and a confession made by any person while he or she is in police custody can not be proved against that person accused of an offence. Of course, a confession made in the immediate presence of a Magistrate can be proved against him. So also Section 162 Cr.P.C bars the reception of any statements made to a police officer in the course of an investigation as evidence against the accused person at any enquiry or trial except to the extent that such statements can be made use of by the accused to contradict the witnesses. Such confessions are excluded for the reason that there is a grave risk of their statements being involuntary and false. Section 27, which unusually starts with a proviso, lifts the ban against the admissibility of the confession/statement made to the police to a limited extent by allowing proof of information of specified nature furnished by the accused in police custody. In that sense Section 27 is considered to be an exception to the rules embodied in Sections 25 and 26."

"The history of case law on the subject of confessions under Section 27 unfolds divergent views and approaches. The divergence was mainly on twin aspects:

1. Whether the facts contemplated by Section 27 are physical, material objects or the mental facts of which the accused giving the information

could be said to be aware of. Some Judges have gone to the extent of holding that the discovery of concrete facts, that is to say material objects, which can be exhibited in the Court are alone covered by Section 27.

2. The other controversy was on the point regarding the extent of admissibility of a disclosure statement. In some cases a view was taken that any information, which served to connect the object with the offence charged, was admissible under Section 27."

"The decision of the **Privy Council in Kotayya's case** , AIR 1947 PC 67 which has been described as a *locus classicus* had set at rest much of the controversy that centered round the interpretation of Section 27. To a great extent the legal position has got crystallized with the rendering of this decision. The authority of Privy Council's decision has not been questioned in any of the decisions of the highest Court either in the pre or post independence era. Right from 1950s, till the advent of the new century and till date, the passages in this famous decision are being approvingly quoted and reiterated by the Judges of this apex Court. Yet, there remain certain grey areas as demonstrated by the arguments advanced on behalf of the State."

811. The Hon'ble Apex court then laid down the requisite conditions of this dispute in following manner:

"The first requisite condition for utilizing Section 27 in support of the prosecution case is that the investigating

police officer should depose that he discovered a fact in consequence of the information received from an accused person in police custody. Thus, there must be a discovery of fact not within the knowledge of police officer as a consequence of information received. Of course, it is axiomatic that the information or disclosure should be free from any element of closure should be free from any element of compulsion. The next component of Section 27 relates to the nature and extent of information that can be proved. It is only so much of the information as relates distinctly to the fact thereby discovered that can be proved and nothing more. It is explicitly clarified in the Section that there is no taboo against receiving such information in evidence merely because it amounts to a confession. At the same time, the last clause makes it clear that it is not the confessional part that is admissible but it is only such information or part of it, which relates distinctly to the fact discovered by means of the information furnished. Thus, the information conveyed in the statement to Police ought to be dissected if necessary so as to admit only the information of the nature mentioned in the Section. The rationale behind this provision is that, if a fact is actually discovered in consequence of the information supplied, it affords some guarantee that the information is true and can therefore be safely allowed to be admitted in evidence as an incriminating factor against the accused."

812. Elucidating the scope of this Section, the Privy Council also in **Pulukuri Kottaya and others Vs. Emprer**, AIR, PC 18, also held that:-

"normally, the Section is brought into operation when a person in police custody produces from some place of concealment, some object, such as a dead body, a weapon or ornaments, said to be connected with the crime of which the informant is the accused."

813. The material point to be noted is that the Privy Council rejected the argument of the counsel appearing for the Crown that the fact discovered is the physical object produced and that any and every information which relates distinctly to that object can be proved. Upon this view, the information given by a person that the weapon produced is the one used by him in the commission of the murder will be admissible in its entirety.

814. While defining the expression 'fact discovered' their Lordships held that:-

"it is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of the

fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added "with which I stabbed. A" these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

815. The Hon'ble Privy Council also explained the probative force of the information made admissible under Section 27 in the following words:"

".....Except in cases in which the possession, or concealment, of an object constitutes the gist of the offence charged, it can seldom happen that information relating to the discovery of a fact forms the foundation of the prosecution case. It is only one link in the chain of proof, and the other links must be forged in manner allowed by law."

816. Similarly Hon'ble Madras High Court in **Emperor Vs. Ramanuja Ayyangar (AIR 1935 Madras 528)**, disagreed with the view taken in **Sukhan's case (supra)** that the expression 'fact' in Section 27 should be restricted to material objects or something which can be exhibited as material object. It was held that the facts need not be self-probatory and the word 'fact' as contemplated by Section 27 is not limited to "actual physical

material object". Emphasis was laid on the wording 'any fact'. In this respect, the view taken in Sukhan's case (supra) was dissented from. The minority view was that the discovery of a witness to the crime or the fact of the accused in purchasing the incriminating material can not be proved by invoking Section 27.

817. The Hon'ble Apex Court in State Vs. Navjot's case supra concluded that:-

"We are of the view that Kotayya's case is an authority for the proposition that 'discovery of fact' can not be equated to the object produced or found. It is more than that. The discovery of fact arises by reason of the fact that the information given by the accused exhibited the knowledge or the mental awareness of the informant as to its existence at a particular place."

"The crux of the ratio in Kotaya's case was explained by this Court in State of Maharashtra Vs. Damu. Thomas J. observed that "the decision of the Privy Council in **Pulukuri Kotayya Vs. Emperor** is the most quoted authority for supporting the interpretation that the "fact discovered: envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect".

818. Similarly in **Mohmed Inayaltuallah Vs. The State of Maharashtra (1976) 1 SCC 828**), while clarifying that the expression "fact discovered" in

Section 27 is not restricted to a physical or material fact which can be perceived by the senses, and that it does include a mental fact, explained the meaning by giving the gist of what was laid down in Pulukuri Kotayya's case. The Hon'ble Apex Court held that:-

"Now it is fairly settled that the expression "fact discovered" includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this."

819. So also in **Udai Bhan Vs. State of Uttar Pradesh (AIR 1962 SC 1116)**, after referring to Kotayya's case the Hon'ble Supreme Court stated the legal position as follows:-

"A discovery of a fact includes the object found, the place from which it is produced and the knowledge of the accused as to its existence."

820. There is almost a direct decision of the Hon'ble Apex Court on the point raised and disputed by learned defence counsel and in which the connotation of the expression "fact occurring in Section 27 was explored and a view similar to **Sukhan's** case was taken on the supposition that the said view was approved by the Privy Council in Kotayya's case.

882. That decision is **Himachal Pradesh**

Administration Vs. Om Prakash (1972) 1 SCC 249).

In that case, on the basis of information furnished by the accused to the Police Officer that he had purchased the weapon from a witness and that he would take the police to him, the Police went to the Thari of PW11 where the accused pointed out PW11 to the Police. It was contended on behalf of the accused that the information that he purchased the dagger from PW11 followed by his leading the Police to the Thari and pointing him out was inadmissible under Section 27 of the Evidence Act. This argument was accepted. And it was held by Hon'ble Apex Court that:-

"In our view there is force in this contention. A fact discovered within the meaning of Section 27 must refer to a material fact to which the information directly relates. In order to render the information admissible the fact discovered must be relevant and must have been such that it constitutes the information through which the discovery was made. What is the fact discovered in this case? Not the dagger but the dagger hid under the stone which is not known to the Police.

883. Not even this the Hon'ble Apex Court in **Antar Singh Vs. State of Rajasthan, 2004 (10), SCC, 657**, again reconsidered the entire law on this aspect summed up the legal principles as follows:-

- (1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.
- (2) The fact must have been discovered.
- (3) The discovery must have been in consequence of some information received from the accused and not by accused's own act.
- (4) The persons giving the information must be accused of any offence.
- (5) He must be in the custody of a police officer.
- (6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.
- (7) Thereupon only that portion of the information which relates distinctly or strictly to the fact.

884. Similarly the above settled principles of law was again reiterated by the Hon'ble Apex Court in **Geejaganda Somaiah Vs. State of Karnataka reported in JT 2007 (4) SC, page 380** in the following words:-

"For the applicability of Section 27 of the Evidence Act two conditions are pre-requisite, viz., (i) information must be such as has caused discovery of the fact, and (ii) the information must 'relate distinctly' to the fact discovered. Under Section 27 only so much of the information as distinctly relates to the fact really thereby discovered, is admissible. While deciding the applicability of Section 27 of the Evidence Act, the Court has also to keep in mind the nature of presumption under illustration (a) to (s) of Section 114 of the Evidence Act. The court can, therefore, presume the existence of a fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relations to the facts of the particular case."

885. Thus as per above discussed legal and factual position, it is held that even, the disclosure statements made by accused Balwant Singh as well as other accused persons, which leads to recovery of no incriminating articles or evidence is still admissible in evidence if it leads to a discovery of a fact, which includes a place related to the crime and as per the law laid down in **State Vs. Navjot Sandhu's case (Supra)** such an information furnished to the Investigating officers leading to the discovery of facts and the conduct of the accused in pointing out the places, where they stayed or from where the preparations for the crime was made, are admissible being conduct of the accused u/s 8 irrespective of the

fact whether the disclosure statement made by the accused contemporaneously with or antecedent to such conduct, falls within the purview of Section 27 of the Evidence Act.

886. Thus this act and conduct of accused Balwant Singh and Jagtar Singh Hawara in identifying the places from where they procured the necessary materials to prepare the belt bomb is admissible as conduct under section 8 of the Evidence Act irrespective of the fact that whether the disclosure statement made by the accused falls within the purview of Section 27.

887. In addition to this one more circumstance, which further shows that after making preparation accused Jagtar Singh Hawara and Balwant Singh reached Chandigarh is the testimony of PW-74, Amrik Singh, a taxi driver, who deposed that on 28.8.1995, he was working as a driver on a Maruti van DAJ-1431, which was being plied as a taxi from Janta Taxi Stand, near Capital Cinema, Patiala and on that day, two persons one of whom was a kesh dhari, Sikh Gentleman and other was clean shaven hired his taxi to go to Mohali and they accordingly put two bags in his taxi and when they reached Mohali, they get down of his taxi at Gurudwara near Bus Stand, Mohali, where one more person was already waiting for them and they delivered those two bags to him and again boarded the taxi and then

alighted down after covering some more distance. He further stated that during the investigations, CBI recorded his statement and show him some photographs out of which he identified two photographs mark-UUUU and mark-UUUU/1 and identified that both these accused persons, who were accused Jagtar Singh Hawara and Balwant Singh travelled in his taxi and came to Mohali. No doubt, this witness has not identified the accused persons in the court but as held earlier, the identification by photographs is also a supporting evidence and goes to prove that as stated by Balwant Singh in his confession, after making preparations at Patiala both of them came to Chandigarh and joined the remaining accused persons for further action.

888. Thus from the above discussed legal and factual position, it is proved that as per their conspiracy, accused Balwant Singh and Jagtar Singh Hawara got stitched two belts to be used as belt bomb and police uniforms, purchased splinters, battery and switch etc. to prepare the belt bomb, which goes to prove that the facts disclosed by accused Balwant Singh in his confession Ex.PW-65/F are true and duly corroborated by the evidence discussed above.

CIRCUMSTANCE NO.6 :

Use of scooter no.PB-11-1955 by accused Balwant Singh and Jagtar Singh Hawara in the conspiracy.

889. In his entire confession statement, accused Balwant Singh has referred at various points that in order to facilitate the preparation etc. he used a scooter. As per the prosecution, scooter number, PB-11-1955, Ex.P-77 was purchased by accused Dilawar Singh through PW-34, Kamal Preet Walia and it was handed over to accused Balwant Singh for execution of his conspiracy.

890. This circumstance is also proved on the file. In this regard, PW-34, Kamal Preet Walia deposed that he is dealing in sale-purchase of vehicles and scooter bearing registration no. PB-11-1955, Ex.P-77 was purchased by him from one Amar Singh in July, 1995 and later on, it was sold by him to Dilawar Singh on 16th or 17th August, 1995, through PW-54, Deep Inder Mehta alias Vipin and he also handed over the registration certificate along with the original affidavit of Amar Singh, Form No.29 and 30, Ex.PW-34/2 to PW-34/5.

891. He also identified the photograph of Dilawar Singh mark YY. The statement of PW-34 is further corroborated by PW-54, Deep Inder Mehta, who has deposed that he know accused Lakhwinder

Singh, Balwant Singh, Gurmeet Singh and deceased Dilawar Singh as all of them used to reside in Street No.12, Guru Nanak Nagar, Patiala.

892. He further deposed that on the asking of deceased Dilawar Singh, to arrange a scooter for him and Balwant Singh, on 16th/17th August, 1995 he took them to Kamal Preet Walia and scooter Ex.P-77 was purchased by Dilawar Singh and it was handed over to accused Balwant Singh.

893. As stated earlier, accused Balwant Singh has not cross examined both these witnesses. As a result the testimony of both these witnesses remained unchallenged and it goes to prove that scooter Ex.P-77 was purchased by Dilawar Singh for using the same for the prosecution of the conspiracy and thereafter it was handed over to accused Balwant Singh to use the same during this conspiracy and its execution.

894. This fact is further proved on the file in view of the testimony of PW-49, ASI Arun Kumar of Traffic Staff of Chandigarh Police as this witness has deposed that on 24.8.1995, he had stopped scooter number, PB-11-1955 and checked the documents and when the driver of the scooter failed to show the driving licence, he challaned him as per the challan chit, Ex.PW-49/1 which is signed by accused Balwant Singh and the registration

certificate of the scooter was taken on record.

895. He further deposed that the CBI had shown him an album containing photographs out of which he picked two photographs of the driver of the scooter and the pillion rider, Ex.PW-49/3 and Ex.PW-49/4 and he also identified them as accused Balwant Singh and accused Jagtar Singh Hawara in the court. During his cross examination, he further deposed that even accused Balwant Singh told him that he is a policeman and stated that he should not be challaned by a co-policeman.

896. As stated earlier, this witness was not cross examined by accused Balwant Singh and even when he was cross examined by the learned counsel for the other accused persons, nothing material comes out to shatter his testimony. He has denied the suggestion of the learned defence counsel that he is identifying the accused persons only on the basis of the photographs shown to him by the CBI at the time of his testimony.

897. As stated earlier, the identity of accused persons by this witness in the court for the first time is admissible in evidence as this witness has seen the accused persons, when he challaned them and he identified their photographs during investigations and by that time both of them were not arrested and therefore there can be no

situation that they may have been shown to this witness.

898. As far as the plea of the learned defence counsel that accused Balwant Singh in his confession alleged that on 24.8.1995, he was at Patiala and as such he cannot be at Chandigarh, is concerned, this plea has no force because as is clear from the challan chit, Ex.PW-49/1, both these accused were challaned at 12.30 p.m. and it is not impossible to reach Chandigarh from Patiala on the same day as it is about 65 kms. away from Chandigarh. At the same time, it is highly impossible that the prosecution could fabricate the challan chit as the entire challan book of this chit, Ex.PW-49/1, shows that it was prepared in continuous manner, date-wise and time-wise and there is no possibility of interpolation etc.

899. In this regard, even PW-99, Chamkaur Singh, brother of deceased Dilawar Singh deposed that on 30.8.1995 when Balwant Singh and Dilawar Singh came to his house, accused Balwant Singh kept the challan chit of scooter no. PB-11-1995 on his cooler. He also identified the challan book along with the original challan chit Ex.PW-49/1 and deposed that this relates to the challan chit which accused Balwant Singh had placed on the cooler of his room on 30.8.1995. He has also deposed that the original challan chit as well as the carbon copy of

the challan, which was kept by the accused on his cooler bears the signatures of accused Balwant Singh.

900. As stated earlier, both these witnesses were not cross examined by accused Balwant Singh despite an opportunity being granted to him, as such as held in ***State of H.P. Vs. Thakur Dass's case (supra)***, the testimony of both these witnesses remained unrebutted and the plea of the learned defence counsel to challenge the testimony of both these witnesses is without any basis.

901. Thus from the above discussion, it is proved that scooter Ex.P-77 was in possession of Balwant Singh and on 24.8.1995 accused Balwant Singh and Jagtar Singh Hawara were found together at Chandigarh and thereafter they went to Patiala and made necessary preparations to prepare the belt bomb.

CIRCUMSTANCE NO.7 :

Recovery of the scooter PB-11-1955, Ex.P77 and second belt of green colour Ex.P97 from the above scooter and its link with accused Balwant singh.

902. As stated earlier, it is proved that accused Balwant Singh was having scooter Ex.P-77 in his possession and he used this scooter during the

execution of the conspiracy and he also disclosed that when Jagtar Singh Tara and Dilawar Singh went to Secretariat, he followed them on his scooter and parked the same in Haryana side Parking and Jagtar Singh Tara also parked the car and then he went to Jagtar Singh Tara and Dilawar Singh in the car and later on when Dilawar Singh left towards Secretariat to detonate himself, he left the Secretariat on the scooter and reached Patiala via Rajpura and from Patiala, he went to Sangrur by a bus, after parking his scooter at a parking of bus stand, Patiala. This story as disclosed by accused Balwant Singh in his confession is also duly proved on record.

903. In this regard PW-72 Prem Singh, who was working as an employee at the Pritam Cycle Stand, Bus Stand Patiala, which is owned by PW-73, Kirat Mohinder Singh, deposed that in the month of August, 1995 he was working as an employee in the above mentioned cycle stand and his duty hours were from 8.00 a.m. to 8.00 p.m.

904. He further deposed that scooter Ex.P-77 was parked at their Cycle Stand on 31.8.1995 at about 6.40 p.m. by a Hindu gentleman having fair complexion and having mustache. While parking it, he opened the dickey of the scooter and brought out a belt from the pocket of the pant and kept the same in the dickey. After that he issued a slip in

this regard by writing the time of parking and date of parking and the factum of depositing of the helmet, which is Ex.PW72/1. He further deposed that the serial number of the slip along with the registration number of the scooter was also mentioned on the helmet which he identified in the court as Article P-94.

905. He further deposed that the owner of the cycle stand was also present and the scooter and the helmet lying in their parking was taken into possession by the police. The scooter was also searched and when the dickey was opened by pulling out the lid, a cloth belt was recovered from the dickey of the scooter wrapped in an envelop. The said belt was converted into a sealed parcel in a piece of cloth, on which he has put his signatures and all the articles including Helmet, Dicky Lid, Belt Parcel and scooter were taken into possession vide memo Ex.PW-72/2, which was signed by him and PW73, Kirat Mohinder and other witnesses.

906. He further deposed that on 10.9.1995, the CBI team came to him and placed some photographs before him out of which he identified the photograph of the person who had parked the scooter and deposited the helmet on 31.8.1995, mark QQQQ and also signed the same. He also identified the helmet Article P-94, Belt Article P-97 and piece of cloth in which it was sealed, Article P-98 as the

same articles. Not even this, he has also identified accused Balwant Singh in the court as the same person, who had parked the scooter along with helmet.

907. Not even this, PW-73, Kirat Mohinder Singh, owner of the cycle stand, also corroborated the stand of PW-72 as to the search of the scooter and taking into possession of the same by the CBI as per the memo of possession Ex.PW-72/2 and corroborated the facts narrated by PW-72 in this regard.

908. As usual, accused Balwant Singh failed to cross-examine any of these two witnesses despite opportunity being granted. As such as stated earlier, as per the law laid down in ***State of H.P. Vs. Thakur Dass's case (supra)***, the testimony of these two witnesses remained unrebutted as to the recovery of scooter Article P-77 and belt Article P-97 from the cycle stand of PW-73 and it goes to prove that the facts narrated by accused Balwant Singh in his confession are correct and duly corroborated.

909. Even when both these witnesses were cross examined by the learned defence counsel for the other accused persons, nothing material came out except the objection as to identity of accused Balwant Singh by PW-72 alleging that this witness

had never seen the accused after 31.8.1995 and as such how he can identify accused Balwant Singh in the court specially when no test identification parade has been conducted.

910. However, as discussed above, the identification of accused Balwant Singh for the first time in the court is duly admissible because this witness has categorically gave the vital statistics of the physical appearance of the person who parked the scooter and out of the photographs shown to him, he had identified the photographs on 10.9.1995 i.e. after 10 days of the parking of the scooter.

911. At the same time, he has denied the suggestion of the defence counsel that he has seen the accused in the court prior to his testimony. He has also stated that on 10.9.1995 this accused was also not with the police party.

912. Above all, it is also proved on the file that this accused was not arrested at that time, as he was arrested only in the month of January 1996 and as such as per the law laid down by the Hon'ble Apex Court in **D.Gopal Krishanan's case supra**, the Investigating agencies were having no option but to show the photograph of this accused to the witnesses to confirm his identity, as he was also not available for identification and specially when

the identifying features of this accused were given by the witness and the same were confirmed by identifying the photograph of this accused. As such, the plea put forward by the learned defence counsel is not tenable in the eyes of law.

913. Thus, the above circumstances prove that after the blast accused Balwant Singh reached Patiala on his scooter and after parking the same at the parking of PW-73, went further to evade arrest and his link with the blast.

CIRCUMSTANCE NO.8 :

Recovery of the slip Ex.PW-60/A, containing a couplet written by accused Balwant Singh from car no.DBA-9598 and its link with accused Balwant Singh.

914. As stated earlier, it is proved on the file that when PW-240, Inspector Nanha Ram conducted the search of the car, Article Ex.P-76, apart from the other things, a slip containing a couplet in Punjabi, Ex.PW-60/A was recovered. Accused Balwant Singh in his confession has categorically deposed that when Dilawar Singh was going to detonate himself, he left a message which was written by him and he kept the message of Dilawar Singh in the car. This fact is also proved on the file as disclosed by accused Balwant Singh

in his confession.

915. As mentioned earlier, PW-60, Raju Tamir Harran, when stepped into the witness box, has categorically deposed that he had seen Balwant Singh while writing and signing the papers and when the slip Ex.PW-60/A was put to him, he deposed that it is in the handwriting of accused Balwant Singh. Not even this PW-95 has also identified this chit to be in the hands of accused Balwant Singh and he in turn failed cross examine him but admitted that PW-95 has deposed true facts. As stated earlier, Balwant Singh has not challenged the testimony of these witnesses and admitted the same to be correct. If it is so, there is nothing on the file to disbelieve the testimony of PW-60 and PW-95 on this aspect also.

916. No doubt, the prosecution has also relied upon the report of the Document & Handwriting Expert, Ex.PW-166/26, given by PW-166, T.R.Nehra but even if we do not consider that report, the factum of identity of the handwriting on the couplet is duly proved from the testimony of PW-60. Thus, this circumstance further proves that as disclosed by accused Balwant Singh in his confession, he remained part and parcel of this conspiracy from the stage of its conception till its execution.

CIRCUMSTANCE NO. 9. :

Extra Judicial confessions made accused Balwant Singh before PW-102, Kuljit Singh his old friend on 01-09-95 and PW-94, Gurpreet Singh and PW-95, Tejinder Pal Singh on 2.9.1995.

917. As mentioned earlier, accused Balwant Singh in his confession disclosed that after this bomb blast, he reached Patiala on the scooter and then went to Sangrur by bus and met his foster father in the early morning at 3.00 a.m. on 1.9.1995 and disclosed to him about his task and thereafter he went to Ludhiana to a friend, who is posted at a Railway Station and then he went to Nagpur and stayed with his friends and disclosed about the entire episode leading to the killing of Beant Singh.

918. Although accused Balwant Singh has not confessed that he disclosed all the facts to his friend at Ludhiana nor he named him. As such let us consider whether accused Balwant Singh made extra judicial confessions before the above witnesses and if it is so, what is the evidentiary value of the same.

920. To prove this fact, the prosecution examined PW-102, Kuljeet Singh, who is old friend

of accused Balwant Singh, as he had also joined in G.R.P. at Patiala and who was also knowing all other friends of Balwant Singh including accused Gurmeet Singh, PW-95, Tejinder Pal Singh and some other friends named by him. With this back-ground, he deposed that in the month of September 1995 he was posted at G.R.P. Ludhiana and was residing in a Government Quarter at GRP Ludhiana.

921. He further deposed that on 01.09.1995 at about 9.05 a.m., accused Balwant Singh came to his quarter. He was clean shaven at that time and was perplexed and was wearing a light green coloured pant and shirt. Instead of taking anything, accused Balwant Singh took him out of his quarter and instructed him to convey a message to his foster father Jaswant Singh that if the police visited his house, they should not tell the police that he is on visiting terms with them.

922. On this, when PW-102 confronted him as to the necessity of such a message, accused Balwant Singh disclosed him that he and his companions had killed Beant Singh, when Dilawar Singh acting as a human bomb, detonated himself near Beant Singh. He also disclosed that accused Jagtar Singh Tara had drove Dilawar Singh in an Ambassador car to Civil Secretariat and that car had remained parked there as the person who had to drive away the car had fallen ill.

823. He also disclosed that the RDX has been procured from Pakistan through Jagtar Singh Hawara and Gurmeet Singh had helped them in manufacturing the bomb. He further deposed that thereafter he offered juice to Balwant Singh who left him and went towards Bus Stand. He further deposed that he did not pass on the message to Jaswant Singh as he was frightened and was having no concern with the case. He also identified the photograph of Dilawar Singh and Gurmeet Singh in the joint photograph Mark TTT/2.

924. This witness was cross examined by accused Balwant Singh himself but the entire cross examination was as to the identity of Gurmeet Singh and he denied the suggestion of accused Balwant Singh that he never met him nor he disclosed anything to him. However apart from this, the testimony of this witness remained unrebutted.

925. Even when this witness was cross examined by the learned defence counsel for the other accused persons incisively, the stand of this witness remained intact. On the other hand he also disclosed, how the police came to know his identity saying that Kulwant Singh, another brother of accused Balwant Singh disclosed his name to the police, he being a friend of accused Balwant Singh and on 6.9.1995 he was called by the CBI.

926. No doubt this witness has admitted that from 1.9.1995 to 5.9.1995 he failed to disclose anything to anybody but it makes no difference because this witness has already stated that he was very frightened and was having no connection with this murder and as such he was under a bona fide belief that if he will disclose, the police may harass or torture him. Apart from this, the testimony of this witness remained unrebutted and there is nothing on the file to disbelieve the facts disclosed by this witness specially when the facts disclosed in confession, Ex.PW-65/F, accused Balwant Singh has disclosed the similar facts on 23.1.1996 when his confession was recorded.

927. Thus the stand taken by the accused Balwant Singh in his confession is duly corroborated by this witness and this extra judicial confession of accused Balwant Singh before this witness further fortifies the case of the prosecution and further proves the factum of conspiracy between accused Balwant Singh, deceased Dilawar Singh, Jagtar Singh Hawara and other accused persons.

928. Similarly accused Balwant Singh in his confession disclosed that on 1.9.1995 he took a train from Delhi and reached Nagpur on the next day and went to the house of his friend residing there

and informed him about the incident. But his friend got afraid and told him to leave his house and for the second night, he kept him in the house of somebody else and thereafter the arrangement of his stay was made in some Hotel.

929. No doubt, accused Balwant Singh has not named his friend in the confession but the factual aspects in this regard is proved on the file from the testimony of PW-94, Gurpreet Singh and PW-95, Tejinder Pal Singh, with whom accused Balwant Singh stayed and before whom he suffered extra judicial confession. Accordingly both these witnesses have corroborated the making of extra judicial confession by the accused before them.

930. First of all, PW-95 Tejinder Pal Singh, who is an old friend of accused Balwant Singh, being the resident of same Guru Nanak Colony and being a child-hood friend of accused Balwant Singh, deposed that accused Balwant Singh is his child-hood friend and he know him and his friends including deceased Dilawar Singh, Lakhwinder Singh, Gurmeet Singh, who were also identified by him in the court.

931. After that he deposed that as and when he came to Patiala on his vacations, he used to meet accused Balwant Singh and Dilawar Singh and even in the month of July, 1993 both of them visited him at

Nagpur and stayed with him where he was residing along with his other friends including PW-94, Gurpreet Singh and all of them had gone to Nanded Sahib and Panchmari etc.

932. He further deposed that in June, 1995, when he was at Patiala, he met Balwant Singh and deceased Dilawar Singh as well as Deepinder Mehta, another friend of all of them. He also deposed that while leaving Patiala, he went to the house of Balwant Singh, where accused Jagtar Singh Hawara was also present and accused Balwant Singh introduced him with him.

933. Then comes the material facts when this witness has deposed that on 1.9.1995, he received a telephonic message from accused Balwant Singh on the number of his landlord, that he is coming to Nagpur as Dilawar Singh had martyred in the assassination of Beant Singh. After that, on 2.9.1995 accused Balwant Singh reached at their house.

934. As per this witness, he has also disclosed all these facts to his friends PW-94 Gurpreet Singh and Amandeep Singh, who also came to his house, when Balwant Singh came there. After that, they took accused Balwant Singh to Amba Jhari Lake, where accused Balwant Singh narrated all the details about the facts stated by him on telephone.

935. As per this witness, accused Balwant Singh told him that on 31.8.1995, he, Gurmeet Singh, Dilawar Singh, Lakhwinder Singh, Jagtar Singh and other companions had assassinated Beant Singh, Chief Minister, Punjab in the Civil Secretariat in a bomb blast, in which, Dilawar Singh had served as a human bomb. He further deposed that accused Balwant Singh further stated that the belt bomb was prepared in the room of Gurmeet Singh and an Ambassador car, which was arranged by accused Jagtar Singh Hawara and his companions from Delhi, was used to reach the Secretariat, by repainting the same into white colour from the friend of Lakhwinder Singh at Chandigarh and on reaching Secretariat, he wrote a Poem for Dilawar Singh. Not even this, accused Balwant Singh also disclosed to them that this assassination was plotted and engineered at the instance of Wadhawa Singh and Mehal Singh.

936. PW-95 further deposed that after knowing all these facts, they all took meals and slept in the flat of his friend Gurpreet Singh and on the next morning, they requested accused Balwant Singh to leave Nagpur so that they should not get in trouble. However, accused Balwant Singh insisted that he has no money and as such he has to stay at Nagpur for sometime and they told him that they can make an arrangement in some Hotel.

937. He further deposed that thereafter all of them reached Hotel President, Nagpur where PW-94, Gurpreet Singh made an entry in the Hotel Register in the name of Sandeep Sharma as asked by accused Balwant Singh and signed the same. He also identified that entry as Ex.PW-94/1 and the signatures of PW-94 as PW-94/2, on the register, Ex.PW-94/3.

938. He further deposed that accused Balwant Singh stayed in that Hotel for 3rd and 4th September and thereafter he shifted to Anant Mehal Lodge where also the name of Balwant Singh was mentioned at Sandeep Sharma with address of Patiala and he made entry under his own signatures, Ex.PW-95/1 with the signatures, Ex.PW-95/2 on the register Ex.PW-95/3. PW-95 further deposed that that on 6.9.1995 they took accused Balwant Singh to Bus Stand, Nagpur from where he boarded a bus bounded for Amravati.

939. He further deposed that he handed over letters, Ex.PW-60/B-54 to Ex.PW60/B-62 which he used to write and receive from Balwant Singh, which were taken into possession vide seizure memo, Ex.PW-95/4. He also deposed that during the investigation, the CBI had also taken his writing and signatures on sheets, Ex.PW-95/5 to PW-95/16.

940. He further deposed that he had also made a similar statement before Metropolitan Magistrate, Delhi, on 6.1.1996, Ex.PW-87/7. He had also identified the photographs, Ex.PW-95/17 to PW-95/25 of Balwant Singh and also identified the photographs, Mark FFFFF, Mark YY/3 to YY/5, Ex.PW-88/3, Ex.PW-95/26 of deceased Dilawar Singh.

941. He also identified the handwriting of Balwant Singh in the diary, Ex.PW-60/B on the pages Ex.PW-60/B-1 to 53 and also identified the handwriting of Balwant Singh on the slip, Ex.PW-60/A the poem written by accused Balwat Singh foe Dilawar Singh.

942. He also identified the handwriting of accused Balwant Singh in the Guest register of Hotel Surya, Ambala City, Ex.PW-95/29 regarding entry no.93 in the name of Sandeep Sharma son of Mohan Singh, Ex.PW-95/30 and deposed that it is in hands of Balwant Singh with his signatures, Ex.PW-95/31 as Sandeep Sharma.

943. Similarly he has also identified the handwriting of Balwant Singh in the register of Devika Hotel, Chipidhola, Agra, Ex.PW-95/32 as to entry dated 29.10.1995 in the name of Sandeep Sharma son of Ram Sharma of Panipat, Ex.PW-95/33, with the signatures, Ex.PW-95/34 of Sandeep Sharma in the hands of Balwant Singh.

944. Similarly he has also identified the handwriting of accused Balwant Singh in the register of Parbhat Hotel, Chipidhola Agra, Ex.PW-95/35 against entry no.37, who mentioned his name as Rajiv Kumar son of Pawan Kumar, Panipat, Ex.PW-95/36 with signatures, Ex.PW-95/37 in the name of Rajiv Kumar in the hands of accused Balwant Singh.

945. Similarly he has also identified the entry, Ex.PW-95/38 of the same register with the same particulars. He also identified the entry, Ex.PW-95/40, to be in the hands of Balwant Singh, giving his name as Gurpreet Singh son of Malik Singh, with the signatures of Gurpreet Singh, Ex.PW-95/41.

946. He also identified the similar entry made at page 227 against serial number 4240 in the name of Rajiv Kumar son of Pawan Kumar, Ex.PW-95/42 with signatures, Ex.PW-95/43 to be in the hands of Balwant Singh. Similarly he has also identified the similar entry made in the records of Hotel Anant in the name of Ashok Kumar of Kanpur, Ex.PW-95/45 with the signatures, Ex.PW-95/46 to be in the hands of Balwant Singh.

947. Similarly, he also identified the entry on the register, Ex.PW-95/47 with signatures, Ex.PW95/48 and entry dated 26.10.1995, Ex.PW-95/49

with signatures, Ex.PW-95/50 to be in the hands of Balwant Singh.

948. When opportunity to cross examine this witness was granted to Balwant Singh, he put a question to this witness that he had made a correct and true statement about his involvement and about the involvement of Dilawar Singh but Gurmeet Singh has been falsely implicated by him. But the witness replied that he had made the statement as per the facts disclosed to him by Balwant Singh, including the role of Gurmeet Singh and Dilawar Singh.

949. The next question, which was put by Balwant Singh to this witness, was that the belt bomb used by him and Dilawar Singh was prepared in his (Balwant Singh's) room and not in the room of Gurmeet Singh but he denied this question and reiterated that accused Balwant Singh has disclosed him that the bomb had been manufactured in the room of Gurmeet Singh.

950. He has also denied the suggestion that accused Balwant Singh never disclosed the name of accused Gurmeet Singh nor he i.e. Balwant Singh was knowing accused Gurmeet Singh before he was arrested in this case. Similarly the suggestion given to this witness that accused Gurmeet Singh has no connection with the assassination of Beant Singh was denied by this witness, reiterating that

whatever accused Balwant Singh has told him about Gurmeet Singh has been deposed by him.

951. Similarly when this witness was cross examined by the learned defence counsel for the other accused for **nine days** with an endeavour to show that he has deposed falsely, nothing material could come out. He denied all the suggestions of learned defence counsels regarding the material facts disclosed by him. Above all once accused Balwant Singh suggested him that whatever has been stated by him is correct except accused Gurmit Singh, there is nothing on the file to say that the stand of this witness can be disbelieved. On the contrary it clinches the entire issue of Point for Determination no.2 and sufficient to pronounce the final verdict.

952. At the same time to the same effect is the testimony of PW-94, who has corroborated the stand of PW-95 in toto and deposed as to how accused Balwant Singh knows him and PW-95, Tejinder Singh; how he met him; and how Balwant Singh came to Nagpur and what was disclosed by him before them and what they had done for the stay of Balwant Singh at Nagpur for the period he remained there.

953. He categorically deposed that accused Balwant Singh stayed in the Hotel President in the assumed name of Sandeep Sharma and that entry was

made by him in the Hotel Register and he identified his handwriting on the register and entries, Ex.PW-94/1 to PW-94/3. He reiterated that he also made a statement before Metropolitan Magistrate at Delhi Ex.PW87/13 which is true and correct giving all details of the case as disclosed to them by accused Balwant Singh.

954. This witness was not even cross examined by accused Balwant Singh despite opportunity being granted. As such as per the law laid down in **State of H.P. Vs. Thakur Dass's case (supra)**, the testimony of this witness remained unrebutted.

955. He was also grilled by the learned defence counsel for six days without any success, to challenge his testimony. No doubt, there are some improvements in the facts stated by this witness before this court in comparison to what was stated before the Magistrate in statement, Ex.PW-87/13 but this confusion and omission was also explained by this witness when he stated that at that time, he was under depression and as such he could not disclose all the facts which he disclosed in this court.

956. Similarly there are also some discrepancies and omissions here and there in the testimony of both these witnesses as to their comparative stand as put forward before the CBI and

then in the court vis-a-vis their statements under section 164 Cr.PC as they have been cross examined for nine days and six days respectively by the learned defence counsel alleging that they are deposing falsely under the pressure of C.B.I. However these contradictions are also in consequential as far as the admissibility of their stand is concerned for the reasons in the following paras.

957. No doubt some of these omissions are in contradiction to the statement made by these witnesses to the CBI in the year 1995 but these were because of the fact that these witnesses have deposed in the year 1999 and as such these omissions and contradictions bound to occur due to passage of time. However despite this, the overall stand of these witnesses remained clear as far as the role of the accused involved in the conspiracy is concerned, specially when accused Balwant Singh admitted that PW-95 has deposed true except qua Gurmit Singh.

958. Not even this, in **Matadin Vs. State of U.P. AIR 1997 S.C. Page 1234**, the Hon'ble Apex Court held that the statements given by the witnesses before the police are meant to be brief statements and could not take the place of evidence in the court. However where the omissions are vital, they merit consideration, but mere small

omissions will not justify a finding of the court that the witnesses concerned are self contained liars.

959. Similarly the plea of the learned defence counsel that the statements of these witnesses and the statements of other witnesses have been manipulated by the Investigating Officer only to link the accused persons by padding and fabrications, cannot be taken into consideration as before accepting the evidence of a witness, the court has to take an overall view as to the credibility of a testimony depending on judicial evaluation of the totality and not an isolated scrutiny because if a case has some flaws those are inevitable because human beings are prone to err and no witness can depose perfectly because truth suffers some infirmity when projected through human process.

960. Lastly it is well recognized principle that prima facie public servants must be presumed to act honestly and conscientiously and their evidence has to be assessed on its intrinsic worth and cannot be discarded merely on account of their status and on the ground that they are interested in the success of their cases.

961. Accordingly when the testimony of these witnesses, who are very important witnesses, was

scrutinized, it comes out that there is nothing on the file to disbelieve them as they are old and childhood friends of accused Balwant Singh and no motive or enmity has been attributed for deposing falsely against the accused, specially when the facts narrated by these witnesses are as per the circumstances disclosed by accused Balwant Singh and as such it co-relate each other.

962. Although these witness have passed the test of cross examination successfully but during the investigations, to ward-off any pressure, threat, torture etc. on these witnesses, the Investigating Officer/Agencies got their statements recorded before PW-87, Rajinder Singh, the then Metropolitan Magistrate, Delhi, who has categorically deposed that when both these witnesses along with Gurvinder Singh were produced before him for recording their statements under section 164 Cr.PC, he questioned all these witnesses extensively as is clear from the proceedings, Ex.PW-87/5 to PW-87/7, relating to witness, Tejinder Pal Singh, Ex.PW-87/15 to PW-87/18, relating to witness Gurvinder Singh (who has not been examined by the prosecution during trial) and Ex.PW-87/10 to PW-87/12 qua witness Gurpreet Singh and found that they are free from any pressure, threat etc and they are going to make their statements voluntarily and then recorded their statements which are, Ex.PW-87/7 of Tejinder

Pal Singh, PW-87/13 of Gurpreet Singh and PW-87/19 of Gurvinder Singh respectively. The cross examination of this witness proved in vain to say that the learned Magistrate has taken the requisite precautions as required under the law before recording the statements of these witnesses and thus remained unrebutted.

963. In view of the above discussed legal and factual position, it is held that accused Balwant Singh made extra judicial confession before PW-102 Kuljeet Singh, who is an old and confidential friend of Balwant Singh and also before PW-94 and PW-95, who is also a child-hood friend of Balwant Singh and admitted that the testimony of PW-95 is true and correct. At the same time, all the details disclosed by these witnesses relating to the facts disclosed were known only to Balwant Singh and when these statements were recorded, accused Balwant Singh was not even arrested and as such there is no possibility of fabricating these facts by the Investigating Agency. If it is so, it is proved that these extra judicial confessions are voluntarily made and true and admissible in evidence as per the principles of law discussed above.

964. First of all, these confessions have been made by accused Balwant Singh on the first and second day after the occurrence, when he went to

his friends to evade arrest and at the same time, the persons before whom these confessions were made are unbiased, not even remotely inimical to the accused and no motive of attributing an untruthful statement has been brought out. Even after a rigorous test on the touch stone of credibility, the stand of these witnesses remained unrebutted.

965. At the same time, the facts disclosed by the accused Balwant Singh to these witnesses by way of extra judicial confessions are not disputed and duly corroborated by the further evidence brought on file by the prosecution showing the stay of accused Balwant Singh at Nagpur and other places under the assumed name.

966. There were genuine reasons to confide in these witnesses by Balwant Singh being his old friends and well wishers and as such these confessions are proved to be unambiguous and thus admissible as it emanates from the person who committed the crime and also proved to be true and voluntarily made and so proved by the witnesses.

967. As far as the question of corroboration is concerned in **State of Karnatka Vs. MM.Ram Dass, AIR, 2002, Supreme Court, 3109**, the Hon'ble Apex Court again reiterated that the evidence in the form of extra judicial confession made by the accused to a witness can not be always termed to be

a tainted evidence. Corroboration of such evidence is required only by way of abundant caution. If the court believes the witness before whom the confession is made and is satisfied that the confession has been true and voluntarily made then conviction can be founded on such evidence alone as as unambiguous extra judicial confession possess high probative value force as it emanates from the person, who committed the crime and is admissible in evidence provided it is free from suspicion and suggestion of any falsity and free from any collateral consideration etc.

968. Accordingly, in the present case, this fact is duly proved as the extra judicial confession of Balwant Singh before the above witnesses is further substantiated by the other evidence of prosecution. Thus as per the principles laid down in ***Kulwinder Singh Vs. State of Punjab (supra)***; ***Alok Nath Datta Vs. State of West Bengal (supra)***; ***State of Rajasthan Vs. Raja Ram's case (supra)*** and ***Gagan Kanojia Vs. State of Punjab's case (supra)***, these extra judicial confessions are the most material circumstance which goes to prove that the facts disclosed by accused in his confession are true and further corroborated from the evidence.

CIRCUMSTANCE NO.10. :

Recovery of photographs of all the accused persons from the room of accused Balwant Singh and deceased Dilawar Singh coupled with other incriminating documents.

969. As stated earlier in view of testimony of PW-85, G.D.Achint, an independent witness and PW-237, A.K.Ohri, it is proved on the file that on 5.9.1995, when house no.1223, Mohalla Guru Nanak Nagar, Patiala, where deceased Dilawar Singh used to reside, was searched and some documents along with a book were recovered and taken into possession as per recovery memo, Ex.PW85/1. The book recovered having a title of Shaheed Bhagat Singh, Article P-119. On the last page of this book a sketch of the belt was also existing at point X. Similarly photograph Article, P-120 was also recovered.

970. Not even this, it is further proved on the file in view of the testimony of PW-237 and PW-88, Bodh Raj Garg that on 12.9.1995, the house of Jaswant Singh, foster father of Balwant Singh, was also searched in the presence of Jaswant Singh and an album containing 65 photographs were recovered and taken into possession vide memo, Ex.PW88/1 and all the photographs were signed by PW-88 and he signed those photographs in the token of its correctness, some of which are Ex.PW88/2, Ex.PW88/3, Ex.DRRRR, Ex.DRRRR/1, mark-KKKK. A

perusal of these photographs shows that all these photographs are mostly of Balwant Singh and Dilawar Singh. It is further proved that on further search one bag containing 4-5 pants and shirts along with one khaki uniform were recovered and were taken into possession.

971. Similarly, when the room of Balwant Singh in house no.68-A, Rattan Nagar, Patiala was searched in the presence of PW-89 by PW-90 D.P.Singh on 5.9.1995, various documents including five books of Punjabi, Article P-99 to Article P-102, one appointment letter of Balwant Singh, Article P-104, a diary of the year 1995, Article Ex.P105, a letter head of Babbar Khalsa, Article Ex.P-106, one application form bearing the signature of Balwant Singh, Article Ex.P107, five news paper Aj di Awaz, Article P-111 to 115, diary of 1992 of Balwant Singh, Article P-110 and all other articles including Audio Cassettes etc collectively marked as Article Ex.P-117, were taken into possession as per the seizure memo, Ex.PW-83/1. This search was conducted in the presence of Jasbir Singh, owner of the house, who, when appeared as PW-83, categorically deposed about this recovery.

972. Not even this when this witness was cross examined by accused Balwant Singh, he further deposed that he was also knowing deceased Dilawar

Singh, who used to visit Balwant Singh, when he was residing in the said room and he was clean shaven at that time. This recovery was further corroborated by PW-84, Gurdev Chand, an independent witness. Thus from the testimony of this witness, it is proved that all the photographs recovered from the house of Balwant Singh were the those photographs, which were used by the Investigating agencies to establish the identity of the accused persons from various witnesses and the recovery of all these photographs and incriminating articles is relevant u/s 8 of the Evidence Act showing the conduct of accused Balwant Singh and his association with the remaining accused persons.

973. At the same time, this evidence also shows that the plea of learned defence counsel as to from where the Investigating officer got the photographs is also clarified and goes to show that accused Balwant Singh was in touch with all his co-accused persons, who were part and parcel of this conspiracy.

CIRCUMSTANCE NO.11. :

Discovery of hideouts and abodes, where the accused Balwant Singh and Jagtar Singh Hawara stayed till their arrest including the places from where they use to make international calls to their bosses, and identification of those places after disclosure statement by

them.

974. The other circumstance, which prominently shed light on the involvement of accused Balwant Singh, Jagtar Singh Hawara and others in this conspiracy as disclosed by him in his confession, relates to discovery of abodes or hideouts and the identification of those places.

975. In this regard, accused Balwant Singh in his confession alleged that after the blast, first of all, he went to Patiala on his Scooter and after parking his Scooter, he went to Sangrur to see his Foster father and then he went to Ludhiana and then met PW-102, C.Kuljit Singh, from where he went to Nagpur and stayed firstly with PW-94, Gurpreet Singh and PW-95, Tejinder Pal Singh and then in different hotels. After that he stayed at Nanded Sahib for 3-4 days and again come back to Nagpur and then to Delhi. From Delhi, he went to Panipat and stayed for two nights in Nanda Guest House and from there he contacted accused Jagtar Singh Hawara through Germany and as per the information of accused Jagtar Singh Hawara, he reached Jaipur on 15.9.1995 and met accused Jagtar Singh Hawara along with the family of Kuldip Singh Granthi.

976. After that he stayed at Jaipur in a hotel for two days and then all of them went to Calcutta and reached there on 19.9.1995 and stayed in a

Lodge for 3-4 days and then shifted to Hotel Classic and stayed there for 10 days. After that they shifted to Hotel New City lodge and after staying there for about 10 days, they came back to Jaipur and stayed there for 3-4 days and then he and accused Jagtar Singh Hawara went to Farukabad in UP and stayed there in Anant Hotel and after some days, accused Balwant Singh went to Kanpur. Then he came to Agra, where accused Jagtar Singh Hawara also reached along with third person namely Vikramjit Singh @ Billa, who also met them at Calcutta.

977. From Agra, they all three went to Farukhabad and stayed there after taking a flat on rent and after that Balwant Singh and Jagtar Singh Hawara came to Ambala and stayed there for about 4-5 days. After that Balwant Singh again went to Farukabad and stayed there for 10 days and then came back to Ludhiana and after staying there for 7-8 days, he reached Jalandhar as per the message given by Jagtar Singh Hawara but both of them were arrested by the Punjab police at Jalandhar.

978. After going through the evidence collected by the investigating agency to prove these hideouts and abodes, it comes out that the prosecution has successfully proved that accused Balwant Singh and Jagtar Singh Hawara stayed at different places of India under the assumed names to evade arrest,

which fact further shows that they were part and parcel of this conspiracy till their arrest.

979. Now let us refer to the specific details of the evidence led by the prosecution in this regard. As discussed earlier, it has been proved that after the commission of this crime accused Balwant Singh first of all went to Patiala on his Scooter, Ex.P-77 and parked the same at Pritam Cycle Stand, as proved by PW-72 and PW-73 and then went to Sangrur in a Bus and then went to village Mehraj and met his Foster father Jaswant Singh.

980. PW-180 Jasbir Singh, a taxi driver, has deposed that on 31.8.1995 accused Balwant Singh took his taxi and went to Village Mehraj and got down near the Gurudwara of the Village and during the investigation, he identified the photographs of that person as Ex.D-RRRR and also identified him in the court. As per the proposition of law and the facts discussed above and held earlier, the identity of this accused by this witness by the photographs and then in the court is duly admissible in evidence.

981. At the same time, when this witness was associated in the investigations, accused Balwant Singh was not arrested and as such there was no question of establishing the identity of accused Balwant Singh from this witness or to go for test

identification parade. He even alleged that the CBI has shown him about 30 photographs and he identified 2-3 photographs of accused Balwant Singh. As such, it is proved that after reaching Patiala, accused Balwant Singh went to the house of his foster father at village Mehraj and then went to Ludhiana.

982. It is further proved, in view of the testimony of PW-88, Bodh Raj Garg and PW-237 A.K.Ohri, Investigating Officer, that when the house of Jaswant Singh foster father of accused Balwant Singh was searched, besides other things a uniform was also recovered from the toilet, which he left there. This fact further proves the authenticity of the confession of accused Balwant Singh.

983. As discussed earlier while considering the extra judicial confession made by accused Balwant Singh before PW-102, Kuljit Singh, it is also proved that accused Balwant Singh reached the quarter of PW-102 and after staying with him for some time, he went to Delhi and then boarded a train and reached Nagpur on 2.9.1995 and met PW-95, Tejinder Pal Singh and PW-94, Gurpreet Singh, who kept him in some flat for the night of 2.9.1995 and thereafter they took him to Hotel President and accused Balwant Singh stayed in Hotel from 3.9.1995 to 5.9.1995 and PW-94, Gurpreet Singh made an entry

in the Hotel register, Ex.PW94/3, showing the name of accused Balwant Singh as Sandeep Sharma, resident of Raipur and he identified his signatures and handwriting for making this entry on the asking of Balwant Singh.

984. The testimony of both the above witnesses further proves that on 5.9.1995, accused Balwant Singh shifted to Anant Mehal Lodge and stayed there in the assumed name of Sandeep Sharma and the entry of that stay was also made by PW-95 in his own signatures and he identified the same as Ex.PW95/1 on the register, Ex.PW95/3.

985. They further proved that during his stay at Nagpur, accused Balwant Singh made several international calls to Germany and U.S.A and asked some body to sent money. They further proved that on 6.9.1995, accused Balwant Singh left Nagpur for Amarawati and then went to Nanded Sahib and resided there.

986. The factum of making of calls by accused Balwant Singh from Nagpur is also proved on the file in view of the testimony of PW-140, Radhey Parkunte, who was working as employee in PCO in Mudra complex, Nagpur, from where accused Balwant Singh used to make international calls.

987. Accordingly, PW-140 proves that all the

entries dated 4.9.1995 at serial no.16,18 and 19, Ex.PW140/2 to Ex.PW140/4 on the PCO register Ex.PW140/1 are in his hands. He further deposed that when the CBI took this register, a photograph was shown to him and he signed the same but he failed to identify that photographs in the court because of lapse of time. But once he identified his signatures on the photograph, it itself shows that it was the same photograph, which was shown to this witness. At the same time, a perusal of the PCO register Ex.PW140/1 and the relevant entries shows that all these calls were international calls made to a single number and this fact is further proved from the statement of STD calls made from the PCO of PW-140 issued by the telecoe department, which further fortifies this fact.

988. Then PW-231, Rajesh Kumar, Inspector, who has seized this record, further stated that PW-140 has also identified the photograph of accused Balwant Singh, with his signatures Ex.PW140/5. At the same time, as stated by PW-95, these calls were made by accused Balwant Singh.

989. PW-231 further proved that he also took into possession the STD call register and statement of Anant Telephone Centre, Nagpur, Ex.PW231/4, which further shows that some International calls were also made from this PCO. Similarly he also took into possession the record of calls made from

Abhineet Corporation as is mentioned in the PCO register of this PCO, Mark-231/B as well as corroborated by the statement of calls of telecom department, mark-231/A.

990. As such, this fact also proved the act & conduct of accused Balwant Singh and is an incriminating circumstance to corroborate the statements of PW-95 and PW-96, whose statements are otherwise admitted to be true by accused and thus corroborate the confession of accused Balwant Singh.

991. Similarly, the staying of accused Balwant Singh in the Hotel President is duly proved on the file in view of the testimony of PW-138, Harish Kumar, who was the Receptionist of Hotel President, Nagpur on 3.9.1995 and he deposed that on that day, one clean shaven man with the name of Sandeep Sharma stayed in their Hotel as per the entry, Ex.PW94/1 and at that time two other persons were also came with him.

992. This witness has categorically identified accused Balwant Singh as the person, who stayed in their Hotel with the name of Sandeep Sharma from 3.9.1995 to 5.9.1995. Needless to say, accused Balwant Singh has failed to cross examine the witness on this aspect and as such as per the law laid down in **in State of H.P Vs. Thakur Dass's case**

(Supra), the testimony of this witness on this aspect remained unrebutted.

993. Similarly, PW-139 Don Bosco, who was also a Receptionist of Hotel President, Nagpur also identified accused Balwant Singh as the same person, who stayed at their hotel in the name of Sandeep Sharma and deposed that he was on duty when this accused checked out from their Hotel. Again, this witness was also not cross examined by the accused Balwant Singh and as such his testimony also remain unrebutted.

994. Since the accused Balwant Singh resided at Nanded Sahib, must be in the Gurudwara from 6.9.1995 to 13.9.1995, the prosecution could not collect the evidence on this aspect but there is further evidence, which shows that as disclosed by him from Nanded, he came back to Delhi via Nagpur and then contacted Jagtar Singh Hawara for further action and then he came to Panipat and resided in Nanda Guest House.

995. This aspect is also proved on the file in view of the testimony of PW-131 Anup Singh, Manager of the Nanda Guest house, who deposed that on 17.1.1996, CBI has taken into possession their Hotel register, Ex.PW131/2 vide memo, Ex.PW131/1 because as per the entry dated 13.9.1995, one Sandeep Sharma stayed in their Hotel from 13.9.1995

to 15.9.1995 as per the entry Ex.PW31/3, Ex.PW31/3-A to Ex.PW31/3-C.

996. No doubt, this witness has not identified the accused but the factum of staying in the name of Sandeep Sharma clearly shows that as stated by accused Balwant Singh, it was he, who stayed in this Guest house from 13.9.1995 to 15.9.1995. At the same time, PW-95 has already identified the handwriting and signatures of the accused on the register, Ex.PW-131/2, which further corroborate this fact.

997. As per accused Balwant Singh, from Panipat he went to Jaipur and met accused Jagtar Singh Hawara, who took him and then they stayed in some Hotel in which accused Jagtar Singh Hawara and Kuldip Singh, Granthi were already staying. This fact is also proved from the testimony of PW-188, Babu Lal Sharma, Proprietor of Ganpati Guest House, Jaipur, who deposed that as per the guest register, Ex.PW188/1 and as per entry dated 14.9.1995, one Ajmer accompanied by two male and one female and child stayed in their guest house from 14.9.1995 to 16.9.1995.

998. Then as alleged by Balwant Singh, there is sufficient evidence on the file which proves that on 19.9.1995, accused Balwant Singh along with Jagtar Singh Hawara reached Calcutta and stayed in

Cheap Hotel for a night and then they shifted to Hotel Classic.

999. PW-226, Badruzzaman, the son of the owner of the Hotel Classic, as well as its Manager, deposed that as per entry No.2571, Ex.PW226/3 in their Hotel register, Ex.PW226/1, one Gurmeet Singh along with a lady and three more persons stayed in their Hotel in two rooms from 20.9.1995 to 30.9.1995 and on 5.1.1996, this record was handed over by him to the CBI and at that time, the CBI had shown some photographs out of which he identified photographs, Ex.PW-95/22, mark-VVVVV and mark-VVVVV/1 and he also signed those photographs.

1000. No doubt, this witness has also not identified either accused Balwant Singh or Jagtar Singh Hawara but he disclosed that the three photographs identified by him were of Kuldip Singh and Hawara and those two persons were between the age of 20 to 30 years.

1001. Similarly PW-220, Anwar Khan and PW-221, Mumtaj Khan, who were working as Receptionist and Manager of New City Lodge, Calcutta also deposed that as per entry, Ex.PW220/2 in their guest register, Ex.PW220/1, one Santokh Singh along with five other persons including Sandeep, Amar, Baljit Kaur etc. stayed in their lodge from

30.9.1995 to 13.10.1995 in two rooms and out of those five persons, two were young boys of about 30 years of age and during the investigations of this case, they handed over this record to the CBI and when some photographs were shown to them, they identified photograph, Ex.PW-95/22 of Balwant Singh, mark-VVVVV of Hawara and mark-VVVVV/1 of Kuldeep Singh.

1002. No doubt, both these witnesses have also not identified accused Balwant Singh and Hawara in the court but as stated earlier, accused Balwant Singh stayed with the assumed name of Sandeep Sharma and the witness had identified his photographs along with the photograph of Jagtar Singh Hawara and that identity is sufficient evidence to corroborate the confession of accused Balwant Singh in this regard. It is stated by Balwant Singh in his confession that from Calcutta they came back to Jaipur, where Kuldeep Singh Granthi left them along with his family and they stayed for three days at Jaipur and then went to Farukabad and stayed in Hotel Anant.

1003. These facts are also proved on the file in view of the testimony of PW-137, Radhey Sham, who was the owner of the Hotel Anant, Farukhabad and who deposed that as per entries, Ex.PW95/45, Ex.P95/47 and Ex.PW95/48, one Ashok Kumar along with two other persons stayed in their

Hotel for three different periods as mentioned in the departure entries Ex.PW137/2 to Ex.PW137/4 on the register, Ex.PW95/44. During his testimony, this witness has categorically identified that it was accused Balwant Singh, who stayed in his Hotel in the name of Ashok Kumar but he could not identify the other accused persons, who accompanied him. He further stated that he also identified the photograph, Ex.PW95/20 of that person, who was with accused Balwant Singh. As such, the testimony of this witness also corroborate the facts disclosed by the accused in his confession.

1004. It is further stated by accused Balwant Singh that after residing for some days at Farukhabad, Jagtar Singh Hawara and other person, Billa came back to Punjab and he went to Kanpur and after residing for one night at Kanpur, he reached Agra, where Billa and Hawara also reached and all of them stayed in Hotel and then went to Farukhabad, where they stayed in a Flat from where they came to Ambala and from Ambala he alone went back to Farukhabad and then he came to Ludhiana and Jalandhar.

1005. PW-187 Ramesh Chand, who was the Assistant Manager in Hotel Laxmi Palace in Jaipur, deposed that as per the guest register of their Hotel, Ex.PW187/1 on 7.11.1995, as per the entries contained at serial no.91, one Jaskaran Singh s/o

Ram Singh along with one Rajeev Kumar checked-in their Hotel and stayed there upto the next morning and as per the record, they came from Panipat and they have to go back in Panipat. It is also proved that accused Balwant Singh stayed at some places with the assumed name of Rajiv Kumar, as deposed by PW-95. Similarly as discussed earlier, PW-188 has also proved about the stay these accused at Jaipur.

1006. Similarly PW-126, Munish Chadha, who was the Manager of the Surya Hotel, Ambala City in the year 1995, deposed that as per the Hotel register, Ex.PW126/A, two persons stayed in their Hotel in the name of Sandeep Sharma and Jaskaran Singh from 23.11.1995 to 25.11.1995 as per the entries, Ex.PW95/30 and Ex.PW95/31 and the same bear the signatures of the customer. No doubt, he has also not identified any of the accused but as mentioned earlier, it was accused Balwant Singh, who was staying at Ambala in the assumed name of Sandeep Sharma along with Jagtar Singh Hawara.

1007. To prove that, accused Balwant Singh and Jagtar Singh Hawara had stayed in a flat, we have the testimony of PW-135, Manish Pal, who is resident of Farukhabad. This witness deposed that in the year 1995-96, when they were residing in Rajiv Gandhi Nagar in Farukhabad, one Ashok Kumar met him in connection with hiring some house on rent as he was residing in Hotel Anant and

thereafter he took him to the house of Mr.Gupta, who rented out his house and thereafter he visited Ashok Kumar once or twice and found that two more persons with the name of Pardeep kumar and one third person was also residing with him, whose name was not told to him.

1008. He further deposed that in January, 1996, the CBI asked him about this and he identified the photographs of those three persons. He further deposed that Ex.PW135/1 is the photograph of the third person, who was residing with Ashok Kumar. He also identified the photograph of the person, who was residing there with the name of Pardeep Kumar, which is Ex.PW95/18 and who is Balwant Singh. He also identified the photograph of Ashok Kumar Ex.PW95/22, who is Vikramjit singh @ Billa, who was accompanying Jagtar Singh Hawara and Balwant Singh during their stay at different places.

1009. Not even this, PW-136, Sanjay Kumar, who was having a PCO at Farukhabad deposed that on 3.12.1995, an ISD call was made from his PCO to Norway, as per entry, Ex.PW136/3 on the register Ex.PW136/1. This witness during his cross examination stated that Farukhabad was at a distance of 6 km from Fatehgarh and as per PW-135, accused Balwant Singh and Jagtar Singh Hawara took a room on rent at Fatehgarh. Thus, the testimony of

both these witnesses also complete the chain of circumstances and proved that as stated by accused Balwant Singh, all of them stayed at Farukhabad in a rented house and then come back to Jaipur.

1010. Similarly, PW-210, Ajay Gupta, owner of Hotel Prabhat Agra, proved about the stay of accused Balwant Singh and Hawara etc. in his Hotel for three different periods i.e from 6.11.1995 to 16.11.1995 and proved all the entries in this regard of their hotel register. He also stated that during the investigations, he identified the photographs of one of those persons as mark-TTTTT, which is of Jagtar Singh Hawara.

1011. In addition to this, PW-230, Girish Joshi, owner of Kiran Hotel, Agra deposed that as per the guest register of their hotel, Ex.PW230/1 for the period 15.9.1995 to 11.5.1996, vide entry no.1066 dated 22.12.1995 Ex.PW-230/2, one Gurdev Bansal along with Surinder Bansal checked in their hotel at 5.35 p.m. and they left the Hotel on 23.12.1995 at 5.00 p.m. This witness was also not cross examined by accused Balwant Singh. No doubt, this witness has not identified any of the accused as the customers who had stayed in their hotel but in view of the stand of the prosecution that the accused used to stay in the assumed names and they were accused Balwant Singh and Jagtar Singh Hawara who stayed in the above hotel, it can be believed

that the testimony of this witness is also related to them.

1012. Apart from this, PW-95 has identified the handwriting of accused Balwant Singh on all the Hotel register as discussed above, which further proves that accused Balwant Singh stayed at different places with assumed names.

1013. Not even this, in **Manish Dixit Vs. State of Rajasthan, JT (2) Supreme Court, Supplement (2), page 237**, the Hon'ble Apex Court held that the evidence regarding entries made in the hotel register with some assumed names is a material circumstance as the factum of concealing his identity from the Hotel people clearly imputes his conduct and makes the same criminal. Similar are the facts in hand.

1014. This proposition was also reiterated by the Hon'ble Apex Court in **State Vs. Navjot Sandhu's case (Supra)**, where it was held that if any information given by the accused to the Investigating officers leads to the discovery of facts and the act and conduct of the accused in pointing out the places, where they stayed or from where the preparations for the crime was made, such disclosures are admissible being conduct of the accused u/s 8 irrespective of the fact whether the disclosure statement made by the accused

contemporaneously with or antecedent to such conduct, falls within the purview of Section 27 of the Evidence Act.

1015. Thus as per above proposition of law, the entire above discussed evidence which remained unchallenged, it is proved that the discovery of the hideouts and abodes of accused Balwant Singh and Jagtar Singh Hawara is admissible u/s 8 of the Evidence Act in so far as it is relevant to know the conduct of these accused, which is influenced by the material facts in issue and as such the same is also admissible under Section 27 of Evidence Act read with Section 8 and sufficient to conclude that whatever has been stated by accused Balwant Singh in his confession, Ex.PW65/F is correct duly corroborated and also proves the story of prosecution as projected.

CIRCUMSTANCE NO.12. :

Expert evidence i.e the reports of various finger prints and document expert relating to the comparison of the hand writing and finger prints of accused persons on the incriminating documents.

1016. In addition to the oral and documentary circumstantial evidence discussed above, one of the circumstance relied upon by the prosecution is that the finger prints and the handwriting of various accused persons were

compared with the disputed chance prints obtained from the car Ex.P-76 and the incriminating documents recovered either from the accused persons or otherwise.

1017. Before discussing the various reports of the experts, let us consider the two technical objections raised by the learned defence counsel. The first objection was that none of the specimen finger prints of any of the accused persons or their specimen handwriting and signatures were taken before the Magistrate or with the permission of the Magistrate and secondly as per the consent of the accused persons. On the contrary, all these specimens are forcibly taken and not proved to be of the accused persons and as such the reports of the experts on the basis of such documents are not admissible in evidence.

1017. On the contrary, the case of the prosecution is that this plea has been put forward by the defence on the basis of the judgment of the Hon'ble Apex Court of the year 1997 i.e **AIR 1997 Supreme Court, page 2690**. As such, it is of no use because the investigations of the present case have been conducted in the year 1995 and 1996 and at the same time, the Hon'ble Apex Court in the case itself held that u/s 4 of the identification of Prisoners Act, the Police is competent to take the finger prints of the accused but to ward-off the

suspicion etc., it is desirable that they should be taken before or under the orders of a Magistrate.

1018. Accordingly after considering the rival contentions of both the parties on this aspect, it comes out that in **Mohd Aman Vs. State of Rajasthan, AIR, 1997 Supreme Court, page 2960** in a case of conviction based only on the report of the finger print expert, the Hon'ble Apex Court held that it is not maintainable because first of all there was no evidence to show that the seized article, on which the finger prints were found, was not tempered before sending to Bureau and the other suspicious circumstance found was that the specimen finger prints of the accused were not taken under the orders of Magistrate in accordance with Section 5 of Identification of Prisoners Act.

1019. However, it was also held that under Section 4 of the above Act, the Police is competent to take finger prints etc. but to dispel any suspicion of fabrication, it is desirable that it should be taken before or under the orders of Magistrate.

1020. At the same time, it is also well settled principle of law as reiterated by the Hon'ble Apex Court in **Jaspal Singh Vs. State of Punjab, AIR 1979, Supreme Court, page 1708** that the science of identifying thumb impressions is an

exact science and does not admit of any mistake or doubt and if it is supported by other evidence, it can be made basis for conviction. Similarly, it is also well settled principle of law that the evidence of a handwriting expert in any particular case can also be sufficient to establish the identity of the offender provided it should be free from suspicion and duly proved and supported by reasons.

1021. At the same time in **State of U.P Vs. Ram Babu Mishra, 1980 CLR, Supreme Court, page 197,** the Hon'ble Apex Court laid down the well settled proposition of law that during the investigation of the case, a court has no power to direct the accused to give a specimen writings etc. for the purpose of comparison. Similarly, the Hon'ble Apex Court further held that under Section 5 of the Identification of Prisoners Act, 1920, a Magistrate can direct the accused to give his measurement or photograph but as far as the signatures and hand writing are concerned, these are excluded from the range of Section 5 of the Act.

1022. Thus the position, which emerges from the above discussion is that, no doubt under Section 4 of the Identification of Prisoners Act, the Police is authorized and competent to take finger prints and the handwritings of the accused during the investigations without permission of

court and consent of accused but in order to eliminate the possibility of fabrication, it is desirable that the same may be taken before or under the orders of the Magistrate. But this proposition will apply only after the pronouncement of the judgment of the Hon'ble Apex Court i.e after 8.5.1997 and as such this can not be applied to the case in hand, which was investigated from 1.9.1995 to February, 1996, specially when Section 5 of the above Act does not apply for handwriting and thumb impressions.

1023. At the same time, after going through the testimony of all the witnesses on this aspect, it comes out that no motive or enmity has been attributed qua these witnesses to allow the CBI to fabricate the handwritings or the finger prints etc. of the accused persons.

1024. As such, let us consider the expert evidence and its evidentiary value to bring home the case of the prosecution.

1025. The first expert evidence relied upon by the prosecution is as to the finger prints of accused Balwant Singh and Lakhwinder Singh found on car no. DBA-9598 Ex.P-76. In this regard, as stated earlier, it is proved on the file that on 1.9.1995 PW-178 after the inspection of scene of crime also inspected the car lying in the Police Station and

as per his inspection memo Ex.PW178/1, he took various photographs of the chance finger prints available on the car as well as on its rear view mirror and the rear view mirror was also taken into possession to examine the same in the Laboratory.

1026. He further deposed that during the investigations the specimen finger prints of all the accused persons were taken by the investigating agencies and were sent to him for comparison with the finger prints, which were lifted from the car. He further deposed that after examining the aforesaid finger prints in the Laboratory, he found one of the finger prints, mark Q-4 as similar to the specimen thumb impression of accused Lakhwinder Singh mark-SFP-24, as per his report Ex.PW178/5 with the reasons Ex.PW178/6. He also identified the rear view mirror article Ex.P-155.

1027. He further deposed that on 16.1.1996 when accused Balwant Singh was arrested, he along with Harinder Parsad went to the CBI Office and took the specimen finger prints of Balwant Singh on six sheets Ex.PW178/8 to Ex.PW178/13. He has also identified accused Balwant Singh in the court and when he was cross examined on this aspect, no question was put to him as to whether accused Balwant Singh has raised any objection while giving his finger prints.

1028. At the same time, no motive or enmity has been attributed qua this witness to fabricate the finger prints or the chance prints. Simply because of the fact that the finger print laboratory is also under the supervision of CBI, it can not be said that the experts always toe to the lines of CBI as their opinions are based on reasons, which are subject to cross examination and the scrutiny of the court.

1029. At the same time, as far as the report of PW-178 relating to Balwant Singh is concerned, he proved that after taking the specimen finger prints of accused Balwant Singh, he compared the same with the chance prints and one of the chance finger prints, Q-15 was found to be similar to the specimen finger print mark-LTS-2, as per his report Ex.PW178/14, coupled with the reasons, Ex.PW178/15.

1030. He has categorically stated that the finger prints of two different persons can not be similar as the science of finger prints is an exact science. As stated earlier, accused Balwant Singh has failed to cross examine this witness on this aspect. As such the fact remains that the opinion of PW-178 qua the finger; prints of accused Balwant Singh on the Car recovered from the spot is duly proved and as stated by accused Balwant Singh in his confession, Ex.PW86/F, he remained with

accused Dilawar Singh in the car at the last movement and as such there is every possibility of his finger prints on the car and the report of the expert is duly corroborate the case of the prosecution in this regard. As far as the evidentiary value of the report of this witness qua accused Lakhwinder Singh is concerned, it will be considered while dealing his case.

1031. The next expert evidence against accused Balwant Singh is the report of PW-166, T.R.Nehra as to the hand writing of accused Balwant Singh on the slip, Ex.PW60/A containing a poem written by accused Balwant Singh for deceased Dilawar Singh, when he was going to detonate himself as a human bomb. As stated earlier, PW-60 Raju Tamir Haran as well as PW-95 Tejinder Pal Singh have already identified the handwriting of this document in the hands of accused Balwant Singh and as such the report of PW-166 in this regard further fortified the evidence of these witnesses.

1031. PW-166 has categorically deposed that he compared the hand writing of Ex.PW60/A with the specimen handwriting of Balwant Singh, Ex.PW106/1 to Ex.PW106/9 as well as with the specimen handwriting of Balwant Singh on the diary, Ex.PW60/B-1 to Ex.PW60/B-53 and found the same in the hands of one and the same person. He further deposed that he again reconfirmed his opinion as

per the subsequent report Ex.PW166/28. Thus, this evidence prove beyond doubt that accused Balwant Singh was part and parcel of this conspiracy from its beginning to end.

CIRCUMSTANCE NO.13 :

Making of Bomb in the room of accused Gurmeet Singh with the help of accused Lakhwinder Singh, Jagtar Singh Hawara, Jagtar Singh Tara and Dilawar Singh.

1032. One of the other material circumstance against this accused as well as against the other accused persons is that after making preparation for making the bomb at Patiala by accused Balwant Singh and Jagtar Singh Hawara and after adding some more splinters etc. at the instance of deceased Dilawar Singh, accused Balwant Singh along with other accused persons named above assembled in the room of Gurmeet Singh, who is admittedly an Electrical Engineer and then they remade the bomb after adding some more RDX and missiles etc. However, this circumstance will be discussed in detail while discussing the case of accused Gurmeet Singh and Lakhwinder Singh as it is the main circumstance against Gurmeet Singh to prove that he was part and parcel of this conspiracy.

CIRCUMSTANCE NO.14. :

Repainting of Car from PW-51 Surinder Sharma Painter by accused Balwant Singh along with accused Dilawar Singh, Lakhwinder Singh and Gurmeet Singh.

1033. The other circumstance, which relied upon by the prosecution against the accused persons is that after procuring the car from Delhi, the same was brought to Chandigarh via Patiala and Mohali and then it was repainted in off-white colour to make it like a Govt vehicle and this work was got done by accused Lakhwinder Singh from his friend PW-51, Surinder Sharma painter, and accused Balwant Singh, Dilawar Singh and Gurmeet Singh accompanied him to his shop from 26.8.1995 to 29.8.1995 to take the delivery of the car.

1034. In his confession, accused Balwant Singh has categorically confessed about the repainting of the car and he disclosed that as per the plan, he and Dilawar Singh along with Paramjit met to get the colour of the car changed and on 27.8.1995 Dilawar came to them and told that the repaint of the car will take some time due to rainy season and it was on 30.8.1995 when he and Dilawar Singh went to the painter for collecting the car.

1035. It seems that accused Balwant Singh has intentionally not disclosed the name of Lakhwinder Singh and Gurmeet Singh for the repainting of the car. However, in view of the

testimony of PW-51 it is proved that as far as accused Balwant Singh and Dilawar Singh are concerned, they were involved in the repainting of the car from PW-51. As far as the role of accused Lakhwinder Singh and Gurmeet Singh in this regard is concerned, it is will be considered while discussing their case.

THE CASE AGAINST JAGTAR SINGH HAWARA

1036. As per the discussion made above, it is proved on the file that accused Jagtar Singh Hawara was the main author of conspiracy and remains part and parcel of this conspiracy, till its execution and his role from the stage, he joined Balwant Singh is already discussed. In addition to this, there are certain specific circumstances, which further links this accused with this conspiracy.

1037. Not even this, the evidence led by the prosecution further shows that the accused Jagtar Singh Hawara along with Jagtar Singh Tara have played some joint role including the preparations made for the success of their conspiracy and as such while discussing those aspects, the evidence against accused Jagtar Singh Tara, since proclaimed offender, will also be considered, though only for the purpose of Section 299 Cr.P.C.

1038. Accordingly after considering the evidence of prosecution on this aspect, it comes out that the prosecution has successfully proved the following circumstances to link accused Jagtar Singh Hawara and Jagtar Singh Tara with the conspiracy and its execution. As such, let us analyse the evidence of prosecution with those circumstances.

CIRCUMSTANCE NO.1 :

Association of Jagtar Sinth Hawara with absconding accused Mehal Singh and Wadhawa Singh for hatching this conspiracy.

1039. As discussed earlier, it is proved on the file as per the confession of accused Balwant Singh, which is admissible for accused Jagtar Singh Hawara also as per the provisions of Section 10 and Section 30 of the Indian Evidence Act, and which is further corroborated by the circumstances discussed above, that accused Wadhawa Singh and Mehal Singh being the members of Babar Khalsa International deputed accused Jagtar Singh Hawara to kill Beant Singh.

1040. This fact is also stated by accused Jagtar Singh Tara in his confession, Ex.PW86/6 in which he has categorically stated that accused

Paramjit singh, who is being tried separately introduced him with accused Jagtar Singh Hawara, in July, 1995 at Delhi, where accused Paramjit Singh was residing with his brother and it was disclosed to him that accused Jagtar Singh Hawara has got training in Pakistan, being a member of Babbar Khalsa and has been sent to India to kill Late Beant Singh and they requested him to help them to kill Beant Singh for which they have already made a plan and he i.e. accused Jagtar Singh Tara agreed to help them and joined the conspiracy from that stage onwards.

1041. Not even this, it is also proved on the file that accused Shamsheer Singh has also suffered a confession, which is true and voluntarily made and in that confession, he has also stated that he was knowing accused Jagtar Singh Hawara since the year 1993 and in July, 1995 Jagtar Singh Hawara came to him and asked him that he has come from Pakistan and accused Wadhawa Singh and Mehal Singh of Babbar Khalsa have asked him to kill Beant Singh, who has started comparing himself with Guru Nanak and Guru Gobind Singh.

1042. As stated earlier, no doubt, the confession made by accused Shamsheer Singh is not admissible as substantive evidence against accused Jagtar Singh Hawara by implication of Section 10 of Evidence Act but still it can be considered to

corroborate the evidence, which comes on the file against Jagtar Singh Hawara, as per the provisions of Section 30 of Evidence Act. Thus, this fact further proves the indulgence of Jagtar Singh Hawara in this conspiracy.

CIRCUMSTANCE NO. 2. :

Association of accused Jagtar Singh Hawara with accused Balwant Singh, through absconding accused Manjinder Singh.

1043. As discussed earlier it is proved on the file from the testimony of PW-132 that accused Jagtar Singh Hawara and Manjinder Singh called accused Balwant Singh at Delhi and stayed in Surya Guest House Dariya Ganj, where a final plan was made by Jagtar Singh Hawara and Balwant Singh. PW-132 has categorically identified accused Jagtar Singh Hawara and Balwant Singh as the persons, who came to his guest house with Manjinder Singh.

1044. This fact shows that the accused Jagtar Singh Hawara came to India to complete his task being the main perpetrator of this conspiracy and then made a complete chain of men and materials by associating other persons including accused Balwant Singh, deceased Dilawar Singh, Jagtar Singh Tara etc. and thereafter made necessary

preparations including the procurement of a Car, RDX, uniforms, belt bomb, a place to work and lastly some hands to help him and ultimately achieved his so-called task in the name of his religion.

CIRCUMSTANCE NO.3 :

Association of accused Jagtar Singh Hawara with absconding accused Kuldeep Singh @ Ram Singh and taking shelter in his house before and after the conspiracy.

1045. As discussed earlier, as per the directions of Wadhawa Singh etc, accused Jagtar Singh Hawara came to India and settled himself in the house of absconding accused Kuldeep Singh @ Ram Singh, in a locality known as Nand Gram Colony, Ghaziabad, which is near to the Delhi but away from the hustle and bustle.

1046. This fact is duly proved on the file in view of testimony of PW-121, who deposed that he is resident of Nand Gram Ghaziabad and he had spotted Jagtar Singh Hawara in the house of Ram Singh 4-5 times and said Ram Singh was residing in his house since June, 1995 and he saw Hawara in his house in the month of July and August, 1995. This witness has further proved the identity of this house by accused Jagtar Singh Hawara in his

presence along with the recovery of incriminating facts, which will be considered later on.

1047. To the same effect is the testimony of PW-122, Bhupinder Singh, who has arranged the house for Ram Singh @ Kuldip Singh and this witness also deposed that he being a property dealer arranged a house for Ram Singh and said Ram Singh purchased H.No.341-A in Nand Gram Colony, Ghaziabad in the year 1995. This witness has also identified the photograph of Ram Singh @ Kuldip Singh, Ex.PW122/1 with his signatures and photograph of Jagtar Singh Hawara, Ex.PW122/2.

1048. During his cross examination, this witness has categorically stated that Ram Singh was already known to him even before the purchase of house. Although this witness is also witness of making of disclosure statement and recovery of incriminating articles by accused Jagtar Singh Hawara. But this will be considered later on.

1049. He has further stated that said Ram Singh resided in that house only upto September, 1995 and then left the house. The testimony of this witness was challenged by learned defence counsel on the plea that the identity of accused Kuldip Singh @ Ram Singh on the basis of photograph is not admissible.

1050. However, there is no force in this plea because PW-122 has categorically stated that he was already knowing Ram Singh @ Kuldip Singh and as such whether this witness has seen the photographs of this accused or not makes no difference, to doubt his ability to identify accused Ram Singh.

1051. Similarly PW-121 has also stated that he had seen accused Ram Singh at least 4-5 times when he started living in his neighborhood between June, 1995 to August, 1995. Not even this, he has further stated that he had also seen accused Jagtar Singh Hawara in the house of accused Ram Singh 4-5 times.

1052. If it is so, as per the settled proposition of law, as discussed above and finally reiterated in **D. Gopal Krishanan Vs. Sadanand's case supra**, the testimony of both these witnesses as to the identity of both these accused can safely be relied upon for more than one reasons.

1053. Firstly one of the witness was knowing accused Kuldip Singh @ Ram Singh even prior to this case and at the same time he has seen accused Jagtar Singh Hawara on so many times and thus was justified to retain his identity in his memory and it was not a case of mere 'fleeting glimpse'.

1054. For the same reason, they can identify their photographs, specially when, by that time, both these accused were not arrested and when accused Jagtar Singh Hawara was arrested, he was identified by them. At the same time, in **D. Gopal Krishanan's** case supra, it is also reiterated that identity through photographs itself is permissible in law.

1055. Thus the testimony of both these witnesses remained unrebutted as far as the identity of accused Jagtar Singh Hawara and absconding accused Kuldip Singh Granthi @ Ram Singh and their residence in H.No.341, Nand Gram Colony, Ghaziabad for the purpose of this conspiracy, is concerned.

Circumstance No. 4. :

Discovery of abodes and hideouts of accused Jagtar Singh Hawara after the commission of crime till his arrest.

1056. At the time of discussing the evidence as to the abode and hideouts, where accused Balwant Singh individually as well as collectively stayed along with accused Jagtar Singh Hawara, it was also proved that when Balwant Singh reached Jaipur on the asking of Jagtar Singh

Hawara, accused Kuldeep Singh Granthi along with his family was also there and all of them stayed at a Hotel in Jaipur from 15.9.1995 to 18.9.1995, as proved by PW-187, Ramesh Chand and thereafter all of them stayed at Calcutta from 19.9.1995 onwards till the time, they returned back to Jaipur, from where accused Kuldeep Singh Granthi and his family left them for some other place. And thereafter they stayed at Agra, Ambala City and other places till their arrest.

1057. Thus, this fact further shows that, as alleged by the prosecution, accused Kuldeep Singh Granthi @ Ram Singh was also involved in the conspiracy and as held earlier, on the asking of accused Jagtar Singh Hawara, he took a house at Ghaziabad, which was used by accused Jagtar Singh Hawara for his residence before and after the conspiracy.

1058. In addition to this, from the cogent testimony of PW-121 and PW-122 it is also proved that after this bomb blast, accused Jagtar Singh Hawara escaped and remained in the house of accused Kuldeep Singh @ Ram Singh at house no. 341-A Nand Gram Colony, Ghaziabad initially, then he along with accused Kuldeep Singh and his family run away from that place and joined accused Balwant Singh and all of them stayed together at different places as discussed and held earlier.

1059. Thus, as stated by accused Balwant Singh in his confession, this circumstance also corroborates him and proved the role of accused Jagtar Singh Hawara as the king-pin of this conspiracy.

CIRCUMSTANCE NO. 5. :

Recovery of incriminating object i.e sketch map of Punjab & Haryana Secretariat and the belt bomb, Ex.PW121/3 from the house of absconding accused Kuldeep Singh @ Ram Singh in consequences to the disclosure statement of accused Jagtar Singh Hawara and identification all the places where he remained and from where he use to make international calls to his bosses.

1060. As held above, it is proved on the file that after coming to India, accused Jagtar Singh Hawara asked absconding accused Kuldeep Singh @ Ram Singh to arrange a house for him some where near Delhi and accordingly Kuldeep Singh with the help of PW-122, Bhupinder Singh, purchased house No.341-A in Nand Gram colony, Ghaziabad, where accused Jagtar Singh Hawara stayed from June, 1995 till September, 1995.

1061. It is alleged by the prosecution that

after his arrest accused Jagtar Singh Hawara made a disclosure statement, Ex.PW121/2 and got recovered the sketch map of the Punjab & Haryana Secretariat, showing the plan to hit the target along with sketch of belt bomb.

1062. As argued by learned Public Prosecutors, this fact is also duly proved on the file and proves to be a material circumstance to link accused Jagtar Singh Hawara with this conspiracy. In this regard, PW-121, Anil Bhatia in addition to proving the presence and identity of accused Jagtar Singh Hawara in the house of Kuldip Singh @ Ram Singh in Nand Gram Colony, further proves that during the investigations, in his presence accused Jagtar Singh Hawara suffered two disclosure statements, first Ex.PW121/2 to the effect that he had prepared a sketch map of Punjab and Haryana secretariat along with sketch of belt bomb to explain Ram Singh, how to hit the target, and it is concealed in the house of Ram Singh and he can get the same recovered if taken to that place. Secondly, Ex.PW-121/1 as to making of calls to Resham Singh in Germany, who is President of Babbar Khalsa International, from the two different PCOs, one on the Merrut road, Ghaziabad and other in the Nand Gram Colony, itself and disclosed that he can get those PCOs identified.

1063. Similarly, PW122, Bhupinder Singh,

who being a Property Dealer had arranged a house for Kuldip Singh @ Ram Singh, also deposed about the making of disclosure statements by the accused. Both these witnesses further deposed that as per his disclosure statements, accused Jagtar Singh Hawara took the police party to Nand Gram Colony in the evening and first of all then went to house no.341-A and himself produced the sketch map, Ex.PW121/3, which was taken into possession as per seizure memo Ex.PW121/4, in their presence and which is signed by them. The testimony of both these witnesses remained unshattered despite incisive cross examination and proved the factum of recovery of sketch map, Ex.PW-121/3.

1064. They further deposed that after that, accused Jagtar Singh Hawara took the police party to a PCO situated on the Merrut Road, Ghaziabad in the name of Garg Communication and identified the same, in the presence of PW-133, Dinesh Chand Garg, owner of the PCO and also identified the second PCO of PW-130, Rajesh Malhotra in Nand Gram and a joint memo of identification, Ex.PW121/5 was prepared, which has been signed by all of them.

1065. To the same effect is the testimony of PW-130, Rajesh Malhotra and PW-133, Dinesh Garg and when stepped into the witness box they both have deposed that on 23.1.1996 officials of the CBI came to their PCOs along with PW-121 and PW-

122 and one Sikh Gentleman to whom they identified in the court as Jagtar Singh Hawara, identified their booths at his own as per memo of identification, Ex.PW121/5, which has been signed by all of them. They also identified the photographs of accused Jagtar Singh Hawara.

1066. When, both these witnesses were cross examined by learned defence counsels, it was alleged that the CBI has shown the photographs of accused Jagtar Singh Hawara to them and they identified him on the basis of those photographs but both these witnesses denied this fact and stated that they have seen the photographs, only on 28.1.1996, when their statements were recorded by PW-239, A.G.L.Kaul, as the person, who had identified their PCOs on 23.1.1996.

1067. They have also denied the suggestions that accused Jagtar Singh Hawara has been shown to them in the court and they identified him on the asking of the CBI. The net result is that the testimony of both these witnesses remained unrebutted, despite the endeavour of learned defence counsels and goes to prove that accused Jagtar Singh Hawara identified their shops to show that he used to make National and International calls during the period of this conspiracy.

1068. Not even this, PW-241, Surinder Pal

Singh, DSP further deposed that on 22.1.1996, during his interrogation, accused Jagtar Singh Hawara suffered another disclosure statement, Ex.PW201/1 in which he admitted this conspiracy and meeting with Manjinder Singh at Surya Guest House, Netaji Subhash Marg, Dariya Ganj, New Delhi in the presence of Balwant Singh and also disclosed that he can identify that place.

1069. And thereafter he suffered another disclosure statement, Ex.PW201/2 in which he disclosed that he can identify the PCO situated in the Gol Market, Delhi from where he used to make calls to Resham Singh, President of Babbar Khalsa, who is residing in Germany in connection with conspiracy, in the presence of PW-201, S.V.Singh, an independent witness and thereafter he took the police party to Delhi to Netaji Subhash Road, Dariya Ganj at Surya Guest House and identified the same, as per identification memo Ex.PW201/4 in the presence of PW-201 and thereafter he identified the PCO in the Gol Market from where he used to make international calls as per pointing out memo Ex.PW201/6. Making of these disclosure statements and identification of these places is duly identified by PW-201, whose testimony remained un rebutted despite incisive cross examination.

1070. Thus as per above proposition of law, the entire above discussed evidence, which remained

unchallenged, it is proved that the discovery of the hideouts and abodes of accused Balwant Singh and Jagtar Singh Hawara along with recovery of incriminating documents and articles coupled with the identification of all the places, where they used to reside and from where they continued to have contacts with their bosses, is admissible u/s 8 of the Evidence Act in so far as it is relevant to know the conduct of these accused, which is influenced by the material facts in issue and as well as under Section 27 of Evidence Act read with Section 8 and sufficient to conclude that whatever has been stated by accused Balwant Singh in his confession, Ex.PW65/F is correct and duly corroborated and also proves the story of prosecution as projected, including the anchor role and act and conduct of accused Jagtar Singh Hawara. The stand of accused Balwant Singh that only he and Dilawar Singh were involved in this operation is far from truth and has been put-forward just to save his comrades.

CIRCUMSTANCE NO.6. :

Expert evidence against accused Jagtar Singh Hawara.

1071. As discussed above, it is proved on the file that after the arrest of accused Jagtar Singh Hawara, he suffered a disclosure statement and got recovered the sketch of the belt bomb from

the house of absconding accused Kuldip Singh Granthi in the presence of PW-121, Anil Bhatia and PW-122, Bhupinder Singh.

1072. To show that this sketch is in the hands of accused Jagtar Singh Hawara, the prosecution relied upon the report of PW-242, Dr.M.A.Ali, Ex.PW242/1, vide which after comparing the questioned writing on the sketch map of Punjab & Haryana Secretariat and belt bomb, Ex.PW123/3, which was marked by the expert as Q-3/1 on the writing and Q-3/2 as to the sketch part, he found that as far as the writing mark Q-3/1 on the sketch Ex.PW121/3 is concerned, it is similar to the specimen handwriting of accused Jagtar Singh Hawara, marked S-34 to S-42 and S-46, which were taken before PW-144, O.P.Sehrawat, who has categorically deposed that the specimen handwriting of accused Jagtar Singh Hawara was taken in his presence on several sheets, which are Ex.PW144/1 to Ex.PW144/17.

1073. No doubt, this witness in his report Ex.PW242/1 mentioned that it is not possible to express any stronger opinion as to the similarities but in the witness box, he clarified that by this he means, he could not find the natural variation of certain letters but otherwise, there were similarities in the individual writing, characteristics between the questioned and specific

writings, which indicates that both have been written by the same person.

1074. The learned defence counsel has tried to challenge the authenticity of this report by saying that this fact is not mentioned in report Ex.PW242/1. However, there is no force in this plea as in the report, PW-242 has mentioned the similarities observed in the individual writings characteristics between the questioned writings mark Q-3/1 and specimen writings mark S-34 to mark S-44, which means the report of PW-242, which was only to corroborate the link of sketch map, Ex.PW121/3 with Jagtar Singh Hawara is duly proved.

1075. Similarly, the plea of learned defence counsel that earlier these writings were compared by PW-234, S.L.Mukhi but he failed to give any opinion as there was no similarity in the both and then to wriggle out from that, the subsequent report of PW-242 was obtained, is concerned, PW-234 was not cross examined by the learned defence counsel on this aspect and even perusal of his report Ex.PW234/1 shows that no opinion was called from this witness as to the authorship of questioned sketch map, Ex.PW121/3, which was marked as Q-3 and even otherwise he has mentioned that he is unable to express any opinion regarding the authorship of this document, which means he has nowhere admitted that after comparing Q-3 with the

specimen hand writing of Jagtar Singh Hawara, he held that the same are not of the same person.

1076. At the same time, even if we ignore this report, there is nothing on the file to disbelieve the recovery of sketch map from the house of accused Kuldip Singh @ Granthi, where accused Jagtar Singh Hawara stayed prior and after the conspiracy. Thus this circumstance further proves that accused Jagtar Singh Hawara was part and parcel of this conspiracy and after deputing Balwant Singh and Dilawar Singh to hit the target, he left Chandigarh immediately when accused Balwant Singh and Dilawar Singh reached Secretariat, being boss of conspiracy and reached Nand Gram Colony to take shelter for some days and to report his bosses that the mission completed and then escaped further.

CIRCUMSTANCE NO.7. :

Purchase of Car No.DBA-9598, Ex.P76 along with accused Jagtar Singh Tara, from PW-32 S.K.Dutta and its use in the commission of this crime.

1077. As discussed earlier, Car No. DBA-9598, Ex.P76, was used by the accused persons for the commission of this crime, as it was recovered from near the site of blast and found containing incriminating articles as discussed above including

the finger prints of accused Balwant Singh and Lakhwinder Singh.

1078. It is further stated by accused Balwant Singh that this car was purchased by accused Jagtar Singh Hawara with the help of accused Jagtar Singh Tara from Delhi and then brought to Chandigarh. Thus, let us analyse the evidence of the prosecution in this regard against accused Jagtar Singh Hawara as well as against accused Jagtar Singh Tara (now proclaimed offender), against whom this is the most material circumstance to link him with this conspiracy.

1079. It is alleged by the prosecution that accused Jagtar Singh Hawara and Jagtar Singh Tara contacted PW-32, S.K.Dutta, who gave an advertisement to sell his Car, Ex.P-76 and purchased this car from him and while doing so, accused Jagtar Singh Tara represented himself to be Basant Singh s/o Jagir Singh resident of Delhi, for a total consideration of Rs.32,000/- and executed various documents in this regard.

1080. Although, the learned defence counsels vehemently argued that the prosecution has failed to prove this fact against any of the accused persons including their identity as the alleged purchasers. However, this endeavour of learned defence counsel proved in vain for the

reasons discussed in the following paras.

1081. First of all, as stated earlier, accused Balwant Singh, in his confession Ex.PW65/F, categorically disclosed this fact. Above all, accused Jagtar Singh Tara in his confession Ex.PW86/6, also admitted that on 20.8.1985 he along with accused Jagtar Singh Hawara went to the house of PW-32 and purchased the car Ex.P76 and on the asking of Jagtar Singh Hawara, he represented himself as Basant Singh s/o Jagir Singh, resident of Shakarpura, Delhi and they parked the car in the house of Paramjit Singh, who is being tried separately and thereafter on receiving a coded telephone message from Jagtar Singh Hawara, he and Paramjit Singh brought this car to Patiala and thereafter joined the remaining accused persons for further action.

1082. As per the legal position discussed above, the confession made by accused Jagtar Singh Tara is a substantive evidence against him and is thus sufficient to link him with this circumstance and conspiracy.

1083. At the same time, this aspect is duly proved on the file from the testimony of PW-32, S.K.Dutta, who was admittedly the registered owner of the car in question. This witness, when stepped into the witness box, deposed that he was the owner

of the car, Ex.P76 and to sell the car he had given an advertisement in the news paper along with his telephone number. He also proved registration certificate, mark-WW and Insurance Certificate Ex.PW32/1 and deposed that this car was in the name of his wife Mrs.Reva Dutta.

1084. Accordingly, while identifying the car, Ex.P76, in the court, he deposed that on 20.8.1995, some persons came to negotiate for the purchase of his car including two Sikh Gentleman, who after inspecting the vehicle, agreed to purchase it for a consideration of Rs.32,000/- and one of those persons disclosed his name as Basant Singh, resident of Trans Jamuna and they left his house saying that they will return back with the sale consideration.

1085. He further deposed that in the evening both of them again came to his flat and he brought them in his drawing room and his wife also came there and executed Form no.29 and 30 and after receiving the sale consideration, which was paid by the companion of Basant Singh, a delivery receipt, a cash receipt was also executed from said Basant Singh, the original cash receipt and Form no.30 and 29 were handed over to said Basant Singh along with the car as well as all other documents of the car including RC, Insurance and the delivery receipt and photocopy of all the remaining documents was

kept by him.

1086. He further deposed that later on he handed over original delivery receipt, Ex.PW32/2, photo copy of cash receipt, Ex.PW32/4 and photocopies of form no.30 and 29, Ex.PW32/5 and Ex.PW32/6 to the police, which were taken into possession as per recovery memo, Ex.PW32/3. He also identified the signatures of his wife on the documents along with the signatures of the person who had posed and signed as Basant Singh.

1087. He further deposed that on 1.9.1995, he came to know that the car which he had sold, had been used in the commission of assassination of Sardar Beant Singh and accordingly he was called by the Police and give the description of the person, who had introduced himself as Basant Singh. On 5.9.1995, he along with his wife came to Chandigarh and identified car No. DBA-9598, Ex.P-76 as per the memo of identification, Ex.PW-32/7.

1088. He further stated that he can identify those persons in the court and he identified accused Jagtar Singh Tara as the person, who had represented himself to be Basant Singh and also deposed that he had signed delivery receipt, Ex.PW32/2 as Basant Singh and these signatures have been marked as Q-17. He was also asked to identify the other person, who accompanied accused Jagtar

Singh Tara but then comes a drama enacted by accused persons to conceal their identity, as on 18.12.1996 it was found that all the accused except one were wearing identical spectacles and have got their beard tied in the net.

1089. Faced with this situation, PW-32 stated that none of those two persons were wearing spectacles or a tied beard. As such, the accused be directed to remove the spectacles and net. However, a dispute was raised by learned defence counsels on this aspect and matter was adjourned for the other day. However, prior to that PW-32 further deposed that later on accused Jagtar Singh Tara had been brought to his residence and had confirmed his identity as the person from whom the car, Ex.P76 was purchased and he identified accused Jagtar Singh Tara as the person to whom he sold the car and who represented himself as Basant Singh and a memo of identification, Ex.PW32/8 was prepared and was signed by him in this regard and he further deposed that he has identified the photographs of other person, who accompanied Jagtar Singh Tara as mark-DC/6 and put his signatures, Ex.PW32/9 in the token of his identification.

1090. After this on the adjourned date, the then Sessions Judge, Chandigarh directed the accused persons to remove the spectacles and net of their beard but they refused to do so and faced

with this situation, PW-32 stated that he can still try to identify that person and thus all the accused persons were lined up and then PW-32 identified accused Jagtar Singh Hawara as the other Sikh youth, who had accompanied Jagtar Singh Tara at the time of sale of this car and who was holding the bag containing the money.

1091. This witness was cross examined by the learned defence counsels for 5 days and the learned defence counsel picking up some infirmities in his statement from here and there, tried to assail his testimony to be manipulated by the CBI with a view that his car was never purchased by any of these two accused persons. However, this endeavour of learned defence counsels proved in vain to do so.

1092. No doubt, this witness has admitted that he was grilled and harassed by Delhi Police in connection with this matter but this is not sufficient to say that he has been motivated to depose falsely. On the contrary, it was quite natural particularly when the police came to know that the car used in the commission of crime, is owned by this witness and that is why he was called and interrogated by the police to know the truth and to pick a thread to unearth the deep rooted conspiracy for the assassination of the then Chief Minister, Punjab and others and this witness

admitted that on 3.9.1995, he has disclosed all the facts to the Police party headed by Mr.Gupta from CBI and when he was asked to produce documents, those were not traceable and further deposed that later on, when on 20.9.1995, the police brought accused Jagtar Singh Tara to identify his house and he handed over those documents. If it is so, the plea of learned defence counsels that this witness is procured witness and that there is no explanation as to why this witness has not handed over the documents to the police from 3.9.1995 to 20.9.1995, is without any basis.

1093. No doubt, Mr.Gupta, who has recorded the statement of this witness has not been examined but it makes no difference specially when PW-32 has nowhere admitted that his statement was recorded by Mr.Gupta. Similarly, this witness has nowhere admitted that he was called by the CBI to produce the documents located by him on 16.9.1995. On the contrary, he explained that when on 20.9.1995 the police brought Jagtar Singh Tara at his residence, he also handed over those documents, which, by that time, he had been able to locate. As such, the plea of learned defence counsel that those documents were fabricated in between, is also not substantiated from any evidence or circumstance.

1094. Similarly, the objection of learned defence counsel that the address given by accused

Jagtar Singh Tara in the assumed name of Basant Singh, has not been verified, is also without any consequence because the moot question was as to whom the car has been actually sold and not as to the authenticity of the address of that person.

1095. One of the plea raised by learned defence counsel was that the register of Watchman, which was being maintained to record the name of the persons, who visited the Sahridaya Apartments, where PW-32 was residing, has not been taken into possession. However, after considering this plea with the evidence, it comes out that no prejudice has been caused to the case of the prosecution by not doing so.

1096. At the same time, the defence itself has examined one witness in defence to bring home this fact but it boom ranged, when DW-20, P.K.Ghosh, Executive Member of the Sahridaya Apartment Society, deposed that no such register was being maintained in the year 1995-96. If it is so, the objection of the learned defence counsel is answered automatically.

1097. Now comes the last objection of learned defence counsels as to the identity of the accused Jagtar Singh Hawara and Jagtar Singh Tara by this witness for the first time in the court, without associating him in any test identification

parade.

1098. However, as per the proposition of law, discussed above, this plea is also without any basis because by now, it is settled proposition of law that failure to hold test identification parade does not make the evidence of the identification in the court inadmissible, rather the same is admissible being substantive evidence but it is considered as a weak evidence.

1099. It is already held that it is well settled law that there are certain exceptions to the general rule that identification of the accused for the first time in court is not admissible as evidence and one of these exceptions is that where the court is impressed by a particular witness, whose testimony, it can safely rely, without such or other corroboration and specially when a witness had any particular reason to remember about the identity of the accused or where the witness had a chance to interact with the accused or had an opportunity to notice the distinctive features of the accused, which lends assurance to his testimony in the court and in such circumstances, the testimony of a witness regarding identification even for the first time can be used as substantive evidence and even sufficient to convict accused on this ground. Similarly it is also settled that there is no bar in showing photograph of suspects

during investigations to the witnesses to confirm their identity special when those suspects are not available for identification.

1100. Needless to say, all these principles were summed up by the Hon'ble Apex Court in **Dana Yadav Vs.Bihar's case (Supra)**, taking into consideration the entire law on the matter including some of the authorities relied upon by the learned defence counsels as discussed above.

1101. Accordingly, in the present case, the act and conduct of the accused persons itself shows that PW-32 was in a position to identify them and that is why they tried to conceal their identity by camouflaging their features, by wearing similar type of spectacles and by tying their beard with a similar net and then by not removing the same despite the orders of the court. At the same time, PW-32 has explained that on 20.9.1995 itself, he had identified the photograph of accused Jagtar Singh Hawara, mark DC/6 with his signatures and identified him as the second Sikh Gentleman.

1102. It is also proved on the file that by that time, accused Jagtar Singh Hawara was not arrested as he was evading his arrest and if it was so, there was no question of conducting test identification parade at that time. Similarly, it is also explained by PW-32 that on 20.9.1995

accused Jagtar Singh Tara had identified him and his Apartment and in turn he also identified the accused as the purchaser of the car.

1103. Not even this, when a suggestion was put to this witness that the CBI had shown these accused persons to him and on the basis of that he is identifying them, it was vehemently denied by the witness. He has also denied the suggestion of the learned defence counsel that since his car has been used in the commission of the crime and he was tortured and kept in illegal custody and was released only when he agreed to toe the story of the sale of car to Basant Singh and his companions as per the whims of CBI.

1104. On the contrary, he explained that on 1.9.1995 itself, he has disclosed all the facts about the sale of car and the description of the person, who had purchased the same and even a sketch of that person was prepared by the National Crime Record Bureau.

1105. Last but not the least, this witness had the occasion to interact with the accused persons while sitting in his drawing room for some time and that was sufficient to notice the distinctive features specially when the accused were having a special feature of being Sikh Gentleman, which itself is one of the parameter of

special and distinctive features.

1106. Thus, there are more than one reason to rely upon the testimony of PW-32, as to the sale of Car, Ex.P76 to the accused persons, specially when it is supplemented by the facts disclosed by accused Jagtar Singh Tara as well as accused Balwant Singh in their confessions.

1107. At the same time, PW-166, T.R.Nehra, a handwriting and document expert after comparing the specimen signatures of accused Jagtar Singh Tara in the name of Basant Singh, Ex.PW120/1 to Ex.PW120/5, which were taken by the CBI in the presence of PW-120, P.C.Thakur with disputed delivery letter Ex.PW32/2, as per his report Ex.PW166/26 found that the questioned signatures by accused Jagtar Singh Hawara in the name of Basant Singh on the original delivery receipt, Ex.PW32/2 are similar to the specimen signatures taken from this accused in the name of Basant Singh.

1108. As stated earlier, the evidence of an expert is a supporting evidence and in this case, in view of the testimony of PW-166, the execution of delivery receipt of the car by accused Jagtar Singh Hawara, further corroborates the statement of PW-32.

1109. One more fact, which fortifies this

aspect is the act & conduct of accused Jagtar Singh Tara in identifying the flat of PW-32 S.K.Dutta, and reciprocal identification by PW-32 of Jagtar Singh Hawara, as per the pointing out memo Ex.PW32/8, in consequences of the disclosure statement of this accused Ex.PW216/1. As per the principles laid down in **State Vs. Navjot Sandhu's case (supra)**, it is now settled that the identification of place, as discussed above, is admissible in evidence as a conduct of accused of accused Jagtar Singh under section 8 read with Section 27 of the Evidence Act.

1110. In this regard, PW-216, Charanjit Singh and PW-244, R.S.Dhankar, who has arrested accused Jagtar Singh Tara, deposed that on 20.9.1995, accused Jagtar Singh Tara suffered disclosure statement, Ex.PW216/1, in which he disclosed that he and Jagtar Singh Hawara purchased a Car from PW-32 and he can identify the house of PW-32 and thereafter, he accordingly took the Police Party Sahirdaya Apartments, Paschim Vihar, New Delhi and identified flat No. A-4/100 in the presence of PW-32, as per the pointing out memo Ex.PW32/A, vide which PW-32 has also identified accused Jagtar Singh Tara as Basant Singh, who purchased his Car and he also deposed that PW-32 also identified the photograph of Jagtar Singh Hawara as the second companion and thereafter accused Jagtar Singh Tara also confessed all these

facts in his confession Ex.PW86/6. This evidence further corroborates the testimony of PW-32.

1111. In view of the above discussed, legal and factual position, it is held that there is over-whelming evidence on the file, which proves that as per their plan, accused Jagtar Singh Hawara and accused Jagtar Singh Tara purchased car no. DBA-9598 from PW-32, S.K.Dutta and then kept the same in the house of accused Paramjit Singh and thereafter accused Jagtar Singh Tara brought it to Chandigarh via Patiala and then it was used by them for entering the Secretariat posing the same as an official vehicle and to their bad luck the person who has to remove the same i.e. accused Lakhwinder Singh failed to do so and it was recovered by the police and ultimately this car proved to be the material link and it leads to unearth the entire conspiracy and the identity and role of all the main accused persons. As such the above discussed circumstances clearly prove that accused Jagtar Singh Hawara was the king-pin of the conspiracy and all material actions and decisions leading to this killing were his brain work and master-minded and coordinated by him to fulfill the objective of conspiracy successfully.

THE CASE AGAINST ACCUSED JAGTAR SINGH TARA

1112 . As discussed above, it comes out that

there are sufficient circumstances against accused Jagtar Singh Tara, since declared a proclaimed offender, to link him with this conspiracy although for the limited purpose of section 299 Cr.PC.

CIRCUMSTANCE NO. 1 :

Confession of this accused.

1113. Firstly, it is proved on the file that this accused has suffered a confession, Ex.PW86/6, which is proved to be true and voluntarily made as per the guidelines settled by law and as per the principles laid down by the Hon'ble Apex Court. As such, this confession clearly proves the role of this accused from the stage, he joined the conspiracy till its execution and is sufficient substantive evidence to link this accused with this conspiracy.

CIRCUMSTANCE NO. 2 :

Purchase of car Ex.P76

1114. Secondly, as discussed and held earlier, it is proved that as per the conspiracy, this accused along with accused Jagtar Singh Hawara purchased the car Ex.P-76, which was one of the main inputs of this operation and brought it

Chandigarh and thereafter joined the remaining accused persons till the execution of the objective of the conspiracy and thus linked him with this conspiracy to the hilt.

CIRCUMSTANCE NO. 3.:

Identification of house of PW-32 and PW-32 as the person from the car was purchased in consequences of disclosure statement.

1115. Thirdly, it is also proved on the file that when this accused was arrested in addition to the disclosure statement suffered by this accused on 18.9.1995, he suffered another disclosure statement Ex.PW216/1 in the presence of PW-216 and as per this disclosure statement, he took the police party to Sahirdaya Apartments, Paschim Vihar, New Delhi and identified the flat of PW-32, in his presence as per the memo, Ex.PW-32/8 and this fact is admissible as act and conduct of this accused under section 8 of the Evidence Act and thus it proves that his confession in this regard is proved to be true and duly corroborated from the evidence led by the prosecution.

CIRCUMSTANCE NO. 4. :

Identification of house of accused Nasib Singh from where the RDX was brought.

1116. Fourthly, it is proved on the file

that on 18.9.1995, when accused Jagtar Singh Tara was interrogated by PW-243, A.P.Singh, in the presence of PW-80, Kirpal Singh s/o Diwan Singh, he suffered a disclosure statement Ex.PW80/1 in which while admitting his association with the accused persons and his role in the conspiracy as to how the planning was made by accused Jagtar Singh Hawara and how they purchased the car and brought it to Patiala, he further disclosed that on 25.8.1995, he along with Jagtar Singh Hawara, deceased Dilawar Singh, Balwant Singh and Paramjit Singh started from Patiala in Car No. DBA-9598 for Chandigarh and they came via Sudhar and on the way accused Jagtar Singh Hawara asked him to divert the car towards Village Jhingran Kalan as he was driving the car and they accordingly reached there and after some time, he brought two bags on bicycle and kept the same in the car and after that all of them came to Mohali and reached the house of accused Gurmeet Singh and he disclosed that he can identify and locate that house. PW-80, Kirpal Singh has proved the making of this disclosure statement.

1117. In addition to this PW-243 further deposed that after this accused Jagtar Singh Tara led the Police party to Village Jhingran Kalan and located the house from where the RDX was brought by Jagtar Singh Hawara. No doubt, no pointing out memo was prepared by PW-243 in this regard but it makes no difference because the only relevant point,

which came out from the disclosure statement of this accused is as to the identity of the house of accused Nasib Singh, and which has been duly substantiated on the file because PW-243 has categorically stated that after reaching Village Jhingran Kalan, accused Jagtar Singh Hawara had pointed out the house from where Jagtar Singh Hawara had brought the RDX and on enquiry, he came to know that this house belongs to accused Nasib Singh and thereafter he arrested accused Nasib Singh. This act & conduct of accused Jagtar Singh Tara is admissible u/s 8 of the Evidence Act as per the proposition of law discussed above.

CIRCUMSTANCE NO. 5 :

Statement of PW-25 and PW-26 regarding his absence from duties from 24.8.1995 to 31.8.1995 under suspicious circumstances.

1118. One more circumstance, which links this accused with this conspiracy is the stand of PW-25 and PW-26, Mohan Raj Shekhar and his wife Revati Raja Shekhar, with whom accused Jagtar Singh Tara was working as driver. It is disclosed by accused Jagtar Singh Tara in his confession that after his association in this conspiracy and after purchasing the car, the same was parked in the house of accused Paramjit Singh because Jagtar

Singh Hawara told him that he will give him a coded message to bring the car to Patiala as and when required and for that purpose accused Jagtar Singh Tara gave the telephone number of PW-25 and PW-26 with whom he was working as driver those days.

1119. Accordingly, PW-25 and PW-26 named above, when stepped into the witness box deposed that accused Jagtar Singh Tara was working as a driver with them on their Ambassador Car and identified accused Jagtar Singh Tara in the court despite the fact that, when PW-25 deposed on 17.10.1996 all the accused persons attended the court proceedings bearing same dress and same turban except accused Nasib Singh, with an obvious motive that they could not be identified by their witnesses.

1120. After this, PW-26 Revati Raj Shekhar deposed that on 23.8.1995 in the evening, she received a telephonic call from a person, who identified himself as Raj and when he called for Jagtar Singh Tara, she told him that he had gone out with her husband and then the caller told him to convey to Tara that he should reach in the house of his maternal uncle tomorrow.

1121. In addition to this, both these witnesses also deposed that accused Jagtar Singh Tara remained absent from his duty from 24.8.1995

to 31.8.1995 without any intimation to them and without their consent and he resumed his duties only on the morning of 1.9.1995 and when he was asked about his absence, he failed to give any explanation.

1122. In addition to this PW-25 also disclosed that on 1.9.1995, he received a call for Jagtar Singh Tara from the same caller Raj and then he called Jagtar Singh Tara, who talked with that caller and thereafter on the evening of 2.9.1995, Jagtar Singh Tara told that he has to go to Ropar for some court case and then he left and never joined back his duties.

1123. Both these witnesses were cross examined by learned defence counsels with an intention that Jagtar Singh Tara was never employed by them as a driver nor they ever received any message for him but this endeavour proved in vain as no motive or enmity has been attributed qua these witnesses for deposing falsely. On the contrary, PW-25 explained that Baldev Singh and Jaswinder Singh, who were brothers of Jagtar Singh Tara were working at a Taxi stand situated near his house and they used to drive his car periodically and in the year 1993, he had kept Jagtar Singh Tara as a regular driver.

1124. Not even this, it was also explained by this witness that the act & conduct of accused Jagtar Singh Tara was very excellent till December, 1994 when his behaviour suddenly changed as he started wearing a kirpan and also started leaving the car alone and used to remain away for hours together. Thus, the testimony of both these witnesses remained un rebutted and there is nothing on the file to disbelieve them. Thus the stand of both these witnesses disclosed that as confessed by accused Jagtar Singh Tara in his disclosure statement after purchasing the car, he took the car to Patiala and thereafter joined the conspiracy till its execution from 24.8.1995 to 31.8.1995 and then resumed his duties on 1.9.1995 and the absence of this accused from his duties for the above period, which was the main period, when the final shape to the conspiracy was given and it was executed. Thus this circumstance clinches the whole issue as far as the role and part of accused Jagtar Singh Tara is concerned.

CIRCUMSTANCE NO. 6 :

Confession in the Court.

1125. Last but not the least there is direct evidence by way of confession of this accused before the court. In this regard as

discussed earlier, in the application moved by Jagtar Singh Tara on 6.5.1999, he admitted his role in the conspiracy. He further admitted that he was part and parcel of the conspiracy along with deceased Dilawar Singh, who had killed S.Beant Singh. Even in the application filed on 2.9.1998, he admitted the same facts. Thus admission of this accused before this court clinches the entire issue and sufficient to link him with this case to its entirety.

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(End of Vol.III)

Vol. IV

THE CASE AGAINST ACCUSED SHAMSHER SINGH

1126. As discussed above, it is alleged by prosecution that during the interrogation of accused Jagtar Singh Tara, he disclosed that the RDX used in the crime was brought by accused Jagtar Singh Hawara with the help of accused Shamsheer Singh. However, he could not be arrested till the filing of the first charge sheet and only after that the CBI came to know that he has been arrested by the Punjab Police in some case registered at Rajpura Police station.

1127. He was accordingly arrested in this case on 11.12.1995 and thereafter he expressed his desire to make a confession and he was accordingly produced before PW-103, D.K.Sharma, and he suffered a confession, Ex.PW103/G in which he disclosed all the details as to his role in the conspiracy.

1128. Even prior to this PW-107, Sapinder Singh @ pappu, whose truck was used for bringing the RDX also disclosed these facts to the CBI and his statement u/s 164 Cr.P.C was also recorded before PW-108, Sh.Paramjit Singh, then Metropolitan Magistrate, Tis Hajari, New Delhi.

1129. As such, now let us scan the evidence

of prosecution to see whether the prosecution is able to bring home the role of this accused in this conspiracy from its initiation till its execution. Accordingly, the evidence of the prosecution when scanned and analysed within the principles settled above, it comes out that the prosecution has proved the following circumstances against accused Shamsher Singh to link him with this conspiracy.

CIRCUMSTANCE NO : 1

Confession of accused Shamsher Singh before PW-103 D.K.Sharma, Metropolitan Magistrate, Delhi.

1130. As discussed above, while considering the making of confession by this accused, it is proved on the file that this accused has suffered the confession, Ex.PW103/G before PW-103, which is made by him voluntarily without any pressure, threat or coercion etc., as per the guidelines laid down by the Hon'ble Apex Court and the law of the land.

1131. Even, it is also held that the confession of this accused can be used as substantive evidence qua him although it can not be considered as an evidence against the other accused persons under the provisions of Section 10 of the Evidence Act.

1132. As such, let us consider what is the evidentiary value of the confession of this accused, first of all qua him and then against his co-accused persons under section 30 of the Evidence Act.

To decide this controversy, the first point to be seen is that what is the affect of retraction of confession by this accused. In this regard, it comes out that this accused was arrested on 11.12.1995 and his confession was recorded on 16.12.1995 and a supplementary charge sheet was filed against him in the court of the learned Area Magistrate and after supplying the copy of charge sheet etc. to him, vide order dt.19.12.1995, the case against Shamsheer Singh was also committed to the Court of Sessions.

1133. Thus, this accused was having sufficient notice about the contents of the charge sheet, which was mainly based on his confession. However, despite this, he has neither moved an application to retract from confession before the Area Magistrate nor before the court of Sessions, when he appeared there after the commitment of the case. On the contrary, for the first time, on 20.2.1996, he moved an application for retraction from his confession along with accused Balwant Singh and Jagtar Singh Tara, alleging that his Advocate has disclosed him that he had made some

confession but he has never made any such confession and not bound by the same. He also alleged that the CBI and Punjab Police had kept him in illegal custody and tortured him and falsely implicated him in this case.

1134. However, as far as the plea of learned defence counsel for Shamsher Singh as well as of Shamsher Singh himself, as to his illegal custody, torture, etc., is concerned, while deciding the dispute of making of confession by this accused, it is also held that this confession is made by him voluntarily without any pressure, torture, inducement etc. despite so many objections of learned defence counsels including some technical lacunas, all of which were held to be without any legal force. Thus, on this ground the making of confession by this accused can not be disbelieved.

1135. Even otherwise, while moving the application dated 20.2.1996 and while retracting from the confession, this accused has nowhere alleged that why and under what circumstances, he is retracting from his confession and he has also failed to allege that he was never produced before any Magistrate for recording his confession.

1136. At the same time, PW-103 has categorically deposed that on 16.12.1995, when he

took up the matter again after giving time to this accused to rethink, he again cautioned the accused that he is not bound to make any confession, if he is under any pressure, threat etc. and even if he will not make any statement, he will not be sent on police remand and if he still intends to make a confession, then even if he will subsequently retract the same, it will be used against him.

1137. However, despite this caution, this accused expressed his desire to make the confession and only thereafter the same was recorded. Thus, the alleged plea of accused while retracting from his confession is neither justified nor it is supported by any material circumstances, specially when it has not been retracted at the first available opportunity to him, when he was produced before the Area Magistrate after the commitment of the case and then in the court of Sessions. If it is so, this retraction is not a legal retraction in the eyes of law and liable to be discarded.

1138. As discussed earlier in **Shankaria Vs. Rajasthan's case (Supra)**, It was settled by the Hon'ble Apex Court that where the confession was not retracted at the earliest opportunity but after lapse of long time and where the accused, while retracting his confession, did not say that he was tutored by the Police to make confession nor he gave any explanation and the confession shows that

there was nothing improbable or unbelievable in the same, on the contrary, the same is appeared to be spontaneous, containing all the details about the manner of the commission of crime, which only the perpetrator of the crime could know and lastly the confession is further corroborated in several material particular from reliable circumstantial evidence, it is admissible and sufficient to bring home the charge to the accused.

1139. This very proposition of law was again reiterated by the Hon'ble Apex Court in ***State of Maharashtra Vs. Damu and others V(2000) S.L.T. 194.*** Thus, there is nothing on the record to say that this confession is legally retracted and thus not admissible in evidence.

1140. As far as the question as to whether this confession is true and its truthfulness corroborated by the evidence, is concerned, it may be recalled that once the authenticity of the confession has been proved to the hilt and when the facts stated in this confession were compared with the evidence on record, in the light of surrounding circumstances and the probabilities of the case, the confession seems to be a probable list of events and it proves the previous act and conduct of accused Shamsheer Singh, leading to his association with accused Jagtar Singh Hawara and then giving his consent to help him in this

operation, reiterating that he also intends to kill Beant Singh. Lastly, his recalling and reminding Jagtar Singh Hawara to complete the operation, is sufficient to say that it is true and probable.

1141. At the same time, the facts disclosed by this accused, as to how he was associated with Jagtar Singh Hawara before hatching this conspiracy are the facts, which only accused Shamsheer Singh could know. Some of the facts disclosed by him in his confession were never disclosed by any other accused, which are relevant only for his association with accused Jagtar Singh Hawara and his confidence in him.

1142. Lastly, an endeavour has also been made by learned defence counsel by challenging the evidentiary value of confession, by saying that all that he had said is that he agreed to accompany accused Jagtar Singh Hawara in the truck of PW-107 Sapinder Singh to Ajnala for bringing the RDX. But apart from this, he has nowhere confessed that he also became part and parcel of this conspiracy and agreed to help him only under that plan.

1143. However, this plea of learned defence counsel shows that somewhere in the corner of his heart, accused Shamsheer Singh knows that he has himself suffered a confession giving vivid details of the conspiracy and his role and he tried to

wriggle out of the same firstly by making a delayed retraction and then by challenging the authenticity of recording of the confession on all available legal lacunas and lastly by disputing its evidentiary value. Thus, this aspect further shows that the confession of this accused is true.

1144. Not even this, a last minute plea of learned defence counsel that the accused has suffered the confession to avoid an evil of temporal nature, is also held to be not legally tenable and if it is so, it can be read into evidence as a substantive proof, as far as this accused is concerned and sufficient to convict him being part and parcel of this conspiracy and intentionally helping his co-accused Jagtar Singh Hawara in bringing RDX from a place near Ajnala and and then by keeping it in his house and all this was done by this accused fully knowing about the purpose of this act and by supporting the objective knowing consequences of his participation.

CIRCUMSTACE NO.2 :

Testimony of PW-107 and PW-108 regarding involvement of accused Shamsher Singh in the conspiracy relating to bringing of RDX by this accused with accused Jagtar Singh Hawara and keeping the same in his house.

1145. It is alleged by the prosecution that

during investigations, on 14.11.1995 PW-107, Sapinder Singh @ Pappu, who is the owner-cum-driver of Truck No. PB-12A-7947, made a statement that his Truck has been used by accused Shamsher Singh @ Shera for bringing RDX without informing him his real intentions till the same was brought.

1146. However, it is alleged by the defence that PW-107, who has not supported the prosecution in this regard, had been tortured and kept in illegal custody and forced to make the statement against accused Shamsher Singh u/s 161 Cr.P.C as well as u/s 164 Cr.P.C, before PW-108 and from the facts & circumstances of the case, this fact is duly proved, as a result, the testimony of this witness clearly proves that accused Shamsher Singh has been falsely implicated by the CBI after concocting a story of bringing of RDX by him.

1147. In view of the rival contentions mentioned above, let us scan the evidentiary value of statement of PW-107. Admittedly, this witness when appeared in the witness box, after admitting himself to be the owner and driver of Truck bearing registration No. PB-12A-7947 and his association and relationship with accused Shamser Singh @ Shera, failed to support the story of the prosecution as projected through him and as such he was declared hostile to the prosecution and was allowed to be cross examined by the Public

Prosecutor.

1148. It is argued by the learned Public Prosecutor that from the cross examination of this witness, it is proved on the file that this witness has been won over by the accused persons specially when admittedly, he is a cousin brother of accused Shamsher Singh and he was also prosecuted for harboring the accused persons along with his family. If it is so, let us go through the total statement of this witness to see, where it leads and how much.

1149. As stated earlier, this witness when stepped into the witness box alleged that he never took his Truck to Ajnala side for bringing anything at the instance of accused Shamsher Singh @ Shera or Jagtar Singh Hawara and he never brought any explosive in his Truck to Village Ukasi Jattan, Rajpura and on this stand this witness was declared to be hostile to the prosecution for suppressing the truth intentionally and was allowed to be cross examined by it.

1150. Accordingly after going through the cross examination of this witness by the learned Public Prosecutor, it comes out that as argued by the learned Public Prosecutor, this witness has been won over by the accused and was taking the side of the accused just to help them for so many

reasons. First of all, it is admitted case of this witness that accused Shamsher Singh alias Shera is his cousin brother and he also admitted that accused Shamsher Singh is resident of Village Ukasi Jattan whereas accused Shamsher Singh has denied this fact by alleging that he is actually resident of Village Kamar Pur, Police Station Sadar, Tehsil Rajpura, District Patiala.

1151. Then PW-107 further admitted that Bhagwant Singh and Daljit Singh brothers of Shamsher Singh alias Shera also used to work as drivers and as such there was a constant association between all of them. Not even this, it is also admitted case of this witness that on 7.11.1995, he was arrested in a case for harboring accused Jagtar Singh Hawaara along with the family members of accused Shamsher Singh and it is also clear from his testimony, when he deposed before the court, that case was still pending against him. Apart from this, he has admitted some more facts, which go to show that he is deposing falsely only with an intention to shield the accused for one reason or the other.

1152. First of all, in the opening lines of his cross examination, it is admitted by him that his statement, Ex.PW107/1 was recorded by the Metropolitan Magistrate, Delhi on 15.11.1995 and it bears his signatures at point to 'A' to 'D' of this

statement. Not even this, he further admitted that the Magistrate had read over his statement to him and then he had signed the same. Needless to say, he also admitted that he was produced before the Metropolitan Magistrate Delhi, on the next day, when his statement was recorded by the CBI under section 161 Cr.PC on 14.11.1995.

1153. Then he admitted that before recording his statement, the Magistrate, who in the present case was PW-108, questioned him and recorded his preliminary statement and also asked him as to what had brought him to court and he replied that he had come to the court to make a statement and lastly when the Magistrate asked him that whether he wants to make the statement voluntarily, he replied in affirmative.

1154. Above all, he also admitted that the Magistrate before recording his statement, asked him whether he is going to make the statement under threat, pressure and he replied that he is going to make it voluntarily and then he made the statement before the Magistrate. However, he took a last minute stand that he made the statement at the instance of the police. Needless to say, the statement recorded by PW-108, Ex.PW-107/1, was read over and explained to the witness in the court when he took this stand.

1155. In view of the above mentioned stand of the witness, it is proved that this witness had made a statement before PW-108, Sh.Paramjit Singh, then Metropolitan Magistrate, Tis Hazari Courts, Delhi, Ex.PW-107/1. As such the question comes whether the statement of this witness recorded by PW-108 is admissible in evidence being recorded as per the procedure established by law and whether the denying of the same by PW-107 alleging it to have been made under the pressure of the police is without any basis?

1156. To know this aspect, let us take the requirements of the law to record the statement of a witness. Section 164 of the Cr.PC provides the procedures for recording the confessions and statements and sub-section(1) of this Section says that any Metropolitan Magistrate or Judicial Magistrate may, whether or not, he has jurisdiction in the case, record any confession or statement made to him in the course of investigation under this Chapter and then sub-sections(2),(3) and(4) provides certain safeguards which a Magistrate is required to take into consideration for recording the confession of an accused.

1157. Whereas sub-section(5) provides the procedure for recording the statement of a witness and it say that any statement other than a confession made under sub-section (1), shall be

recorded in such manner hereinafter provided for recording of evidence as is, in the opinion of the Magistrate, best fitted to the circumstance of the case and the Magistrate shall have the power to administer oath to the person whose statement is so recorded.

1158. Thus the above mentioned procedure clearly shows that as far as the recording of statement of a witness under Section 164 Cr.PC is concerned, no specific procedure or guidelines have been provided. However it is settled proposition of law that while recording the statement of a witness under section 164 Cr.PC, the Magistrate is required to see that the witness is going to make a statement voluntarily without any threat, inducement or pressure and only after satisfying himself about this, the statement can be recorded.

1159. Accordingly in the present case, when the statement made by PW-108 was analysed, it comes out that he has taken all the necessary precautions before recording the statement of this witness and the same was recorded only after satisfying that the witness is not under any pressure, inducement or threat.

1160. In this regard, PW-108, Sh.Paramjit Singh, then Metropolitan Magistrate deposed that

when PW107, Sapinder Singh alias Pappu was produced before him for recording his statement under section 164 Cr.PC, as per the application, Ex.PW-108/1, he after sending the police personnel out of the court, called the witness in his chamber and questioned him, as per the preliminary examination, Ex.PW-107/1/E and put certain questions to know the state of mind of the witness, as per the details Ex.PW-107/1/F and when he was satisfied that the witness is going to make a statement without any pressure or threat etc. only then the same was recorded. If it is so, there is nothing on the file to say that the statement made by PW-107 before PW-108 was under the threat of the police, as alleged by PW-107.

1161. When PW-108 was cross examined by the learned defence counsel for accused Shamsher Singh and others, it was suggested to him that whether he enquired from Sapinder Singh as to for how many days, he was retained by the CBI and the witness answered that there was no need of making any such enquiry as Sapinder Singh was produced for making a statement in the capacity of a witness. He has categorically denied the suggestion of the learned defence counsel that PW-107, Sapinder Singh, brought to his notice that he was in the custody of the CBI for the number of days and had been tortured. Had it been so, PW-108 would have mentioned it in his preliminary enquiry.

1162. At the same time, no motive or animosity has been shown qua this witness for recording a false statement of the witness under the pressure of CBI. As such despite incisive cross examination of PW-108, his stand that he has recorded the statement of PW-107 after recording his satisfaction as to the voluntariness of the same, remained unrebutted and if it is so, the stand of PW-108 clearly shows that as alleged by the prosecution, PW-107 has been won over for the obvious reasons as mentioned above and if it is so, no benefit of his denial of the facts stated by him before PW-108, can be given to the accused persons.

1163. Above all, as mentioned above, PW-107 has failed to justify his stand of making the statement before PW-108 under any inducement or threat. Needless to say, it is undisputed case of the prosecution that this witness was arrested in a case registered under section 212 and 216 IPC along with accused Shamsher Singh for harbouring accused Jagtar Singh Hawara and those offences were bailable offences and as is clear from the copy of the judgment Ex.DX/1, PW-107, Sapinder Singh was on bail in that case and if it is so, there is no question of his illegal custody with the police or CBI. It is another matter that he and Shamsher Singh and others have been acquitted in the above case vide judgment Ex.DX/1 but it has no bearing on

this case specially when it is nowhere held in that case that this witness was tortured or harassed and falsely implicated in that case to pressurise him in this case.

1164. As far as the plea of learned counsel for the accused that this witness has moved the Hon'ble High Court against the harassment by the CBI as per the petition, copy of which is Ex.PW-107/2, is concerned, that petition when filed before the Hon'ble High Court, was disposed of at the motion hearing itself and the Hon'ble High Court ordered that the respondents i.e. the State of Punjab, S.S.P Ropar and S.H.O P.S.Kharar, will enforce the provisions of Section 160 Cr.PC strictly and the petitioner PW-107 could not be summoned in connection with any enquiry etc. without following the provisions of section 160 Cr.PC.

1165. At the same time, this petition has been filed by the witness in the year 1998 and by that time, his statement in the case has already been recorded before PW-108 and there is no explanation on the file as to how this petition has any relevancy with the present case and how it can be considered as a ground to comment on the making of the statement by him before PW-108.

1166. Last but not the least, PW-107

further admitted that after making the statement before PW-108 on 15.11.1995 till 3.2.2000, when his statement was recorded in this court, he never moved any application with any authority as to his illegal custody or harassment or making of statement before PW-108 at the instance of police. At the same time, he had also never approached any other judicial authority for recording his statement under duress and even in the petition filed by him in the Hon'ble High Court, he has nowhere alleged so. Thus the fact remains that there is nothing on the file to disbelieve the stand taken by PW-107 before PW-108 relating to the facts of this case.

1167. As is clear from the copy of judgment Ex.DX/1 and as admitted by this witness, he is owner of truck no. PB-12-A-7947 and it is clear that this truck was taken into possession by the Rajpura Police on 7.11.1995 vide FIR no.127 dated 7.11.1995. Even when the contents of the statement recorded by the CBI and PW-108 were put to him, he deposed that he had disclosed to the CBI that in the month of August 1998, his truck was attached with Lehal & Co. Lalru for transportation of gas cylinders and it was parked inside the factory at Lalru loaded with empty cylinders. He also admitted that he disclosed to the CBI that Bhagwant Singh, who is the brother of accused Shamsher Singh, was employed as a driver on the

truck.

1168. He further admitted that he also disclosed to the CBI that when he returned back from Lalru, Daljit Singh told him that Shamsher Singh alias Shera had come and asked him that he (Shamsher Singh) had to bring some urgent household goods and he (PW-107) should remain on the truck and met him.

1169. He also admitted that after sometime, accused Shamsher Singh came there and told the same facts and asked him to take the truck to Amritsar. In this way, he has admitted all the facts recorded by the CBI in his statement to show as to how he took his truck to Rajpura with Shamsher Singh and how Jagtar Singh Hawara joined them and lastly how they brought two bags from a Village near Ajnala and then they came to know that it was RDX. These very facts were disclosed by this witness before PW018 on oath. Although he alleged that he was forced to make such statement but at one stage, he volunteered that Daljit Singh had never accompanied them with the truck and as such there is no question of dropping him on the way in Village Ukasi Jattan.

1170. Above all, as stated earlier, it is admitted case of this witness that he along with Shamsher Singh was challaned and they were

prosecuted in this jail by the learned CJM Chandigarh and when he deposed that case was still pending and accused Shamsher Singh used to meet him during the proceedings. If it is so, the apprehension of the prosecution that this witness has been pressurised and forced to depose in favour of the accused is well founded. At the same time, the prosecution has already got recorded the statement of PW-107 through PW-108 which also shows that now he has been won over.

1171. As far as the case law relied upon by the learned defence counsel on this point is concerned, in **Balak Ram Vs. State of U.P. AIR 1974 SC 1265**, the Hon'ble Apex Court held that the evidence of witnesses cannot be discarded on the plea that their statements were recorded under section 164 Cr.PC. However it was a case where the witness has supported the prosecution during the trial as per the facts disclosed before the Magistrate under section 164 Cr.PC and on those facts, it was held that such witnesses feel tied to their previous statement given on oath and have theoretical freedom to depart from the earlier version, a prosecution for perjury could be a price of that freedom and as such, it was held that the salient rule of caution must always be borne in mind while appreciating the evidence of such witness. Similar principle was reiterated by the Hon'ble Andhra Pradesh High Court in **Bolum Bhaskra**

Rao Vs. State of A.P. 1985 Cr.L.J.32.

1172. However, in the present case, PW-107 has not supported his stand as taken by him before PW-108. On the contrary, he chose to toe the line of the accused persons fully knowing that he has already made a statement before PW-108 and also failed to wriggle out from that statement. Resultantly, as stated by PW-108, this witness has admitted that accused Shamsher Singh, who is his cousin brother, asked him to provide his truck to him, for bringing some household articles from a Village near Amritsar and on the way, accused Jagtar Singh Hawara joined them along with another person and thereafter they reached to a Village near Ajnala and accused Jagtar Singh Hawara brought two bags and then they returned back to his Village Ukasi Jattan and only then PW-107 came to know that there is RDX in the bag and accused Shamsher Singh also threatened him not to disclose this to anybody.

1173. Incidentally, by now it is settled proposition of law that in the event of a portion of evidence not being consistent with the statements given u/s 161 Cr.P.C and the witness stands declared hostile, that does not, however, mean and imply total rejection of evidence. The portion, which stands in favour of the prosecution can be accepted subject to a close scrutiny of the

over all statement. In this regard, we can refer to the observation made by the Apex Court in **State of U.P. Vs. Ramesh Parsad, AIR, 1996, Supreme Court, 2766,** as well as **Gurpreet Singh Vs. State of Haryana, AIR, 2002, Supreme Court, page 3217.**

1174. Similarly in **Bhagwan Singh Vs. State of Haryana, AIR, 1976, Supreme Court, page 202,** the Hon'ble Apex Court reiterated the above settled principle of law and held that mere fact that a witness is declared hostile by the party calling him and allowed to be cross examined does not make him a unreliable witness so as to exclude his evidence from the consideration altogether. The evidence, which comes in favour of prosecution is admissible in trial and there is no legal bar to base a conviction upon such a testimony if corroborated by other reliable evidence.

1175. Not even this, in the present case, PW-107 has not only supported the theory of prosecution, when he was cross examined, on all material facts, but his stand is further corroborated by the evidence of PW-108, who has further proved that the statement made by PW-107 before him u/s 164 Cr.P.C was the true account of the facts disclosed by PW-107. And this is also supported by the confession of accused Shamsher Singh, as such, the stand of accused in his confession and by the witness before this court

admitting material facts supplement each other.

1176. As far as certain objections raised by the learned defence counsel as to the authenticity of the statement of this witness through PW-107 is concerned, again there is no force in those grounds. No doubt, the CBI has not apprehended the truck of PW-107 in this case, but it makes no difference because it is proved on the file that the truck of PW-107 was already apprehended by the police on 7.11.1995 and PW-107 was never a party in bringing the RDX. On the contrary, he was never informed or knowing the real purpose for which his truck was obtained by accused Shamsher Singh and as such there was no need to take the truck in custody in this case.

1177. As far as the plea of learned defence counsel that the other two persons, who allegedly accompanied accused Shamsher Singh and Jagtar Singh Hawara in the truck, namely Dalbir Singh and Deva Nand @ Bhaia, have neither been cited as a witness nor has been examined, is concerned, again, there is no force in this plea because in the supplementary charge sheet no.6-A filed against the accused, Shamsher Singh, PW Daljit Singh, who is none-else but the real brother of accused Shamsher Singh, is also cited as a witness and it is further alleged that other witness Deva Nand @ Bhaia had left the job of PW-107.

1178. Not even this, during a trial the prosecution tried to summon PW Daljit Singh but his summons remained unserved on one pretext or the others. However, the statement of this witness recorded by the CBI u/s 161 Cr.P.C, is part and parcel of supplementary charge sheet filed against Shamsher Singh, Ex.PW248/A, in which PW Daljit Singh has also deposed about the taking of truck of PW-107 by accused Jagttar Singh Hawara with a further explanation that although he and Deva Nand @ Bhaia accompanied them in the truck but on the way both of them were directed to get down from the truck. No doubt, this statement cannot be read into evidence but it shows that this witness was associated in the investigation and disclosed about the whereabouts of other witness Deva Nand alias Bhaia as not traceable.

1179. He also explained that Deva Nand @ Bhaia, who was the cleaner on the truck, had already left the job and his address is not known. If it is so, there is sufficient explanation on the file for the non-examination of these witnesses. Above all, as discussed earlier, the non-examination of these witnesses has no affect on the case of the prosecution qua this aspect, which is otherwise proved on the file.

1180. As far as the plea of this learned

defence counsel for this accused that neither Jagtar Singh Tara nor accused Balwant Singh have disclosed the name of accused Shamsheer Singh as conspirator, is concerned, there is no force in this plea also because first of all, the confession of Balwant Singh was recorded on 23.1.1996 and by that time, accused Balwant Singh was knowing that accused Shamsheer Singh has already been arrested in this case and as such he intentionally failed to name him in the conspiracy although he indirectly admitted that RDX was arranged by Jagtar Singh Hawara.

1181. Besides this, it is also proved that accused Balwant Singh in his confession nowhere disclosed as to how the RDX was procured. On the contrary, he confessed that accused Jagtar Singh Hawara, when met him at Patiala somewhere in the first week of July, 1995, disclosed that he will prepare a belt bomb and thereafter he (Jagtar Singh Hawara) met him only on or about 10 or 12 August 1995 which means that even accused Balwant Singh was not knowing that as to how and from where accused Jagtar Singh Hawara procured the explosives. If it is so, there is no question of naming accused Shamsheer Singh by him.

1182. Similarly accused Jagtar Singh Tara has also confessed that after giving his consent to help accused Jagtar Singh Hawara in this operation

in July 1995, he met Jagtar Singh Hawara only on 20.8.1995, when they purchased the car and if it is so, by that time, the RDX was already procured by accused Jagtar Singh Hawara and therefore there was no question of knowing this fact by Jagtar Singh Tara. As such this plea proved in vain to provide any relief to accused Shamsher Singh. On the other hand, all these facts show that Jagtar Singh Hawara intentionally concealed these facts from the other accused persons.

1183. As far as the plea of the learned defence counsel that there is no link evidence on the file to say that accused Shamsher Singh, participated in this conspiracy knowing its purpose and he merely helped Jagtar Singh Hawara in providing the truck and as such it cannot be said that he was part and parcel of the conspiracy, is concerned, no doubt, as per the law discussed above, the prosecution is obliged to show that there was a positive agreement in the mind of two or more persons and there was a meeting of minds to do an unlawful act by putting their heads together.

1184. However, in this case there is positive evidence on the file which shows that accused Shamsher Singh joined the conspiracy fully knowing its purpose and aided his co-conspirators in that direction with a complete agreement to do this unlawful act. In view of the confession of

accused Shamsher Singh, it is further proved that he was knowing accused Jagtar Singh Hawara, since the year 1993, which shows that this accused was having a bona fide belief in his mind that by killing Beant Singh, the feelings of Sikhs will be healed up for atrocities committed by S.Beant Singh and for comparing himself with the Sikh Gurus.

1185. Not even this, his confession further shows that he also met Jagtar Singh Hawara on different occasions in this regard and lastly on 8.8.1995, accused Jagtar Singh Hawara asked him to arrange a truck to procure the explosives and accused Shamsher Singh arranged the truck of PW-107 and accompanied him and brought RDX and kept the same in his house. He also admitted that later on, after two days, accused Jagtar Singh Hawara took the RDX from his house on a Bajaj Chetak scooter.

1186. Not even this, he also confessed that on 24.8.1995 Jagtar Singh Hawara again came to his Tubewell and stayed with him and he again reminded him about the target and Hawara promised him that it will be done shortly.

1187. In view of the above discussed legal and factual position it is held that the testimony of PW-108 coupled with the admissions made by PW-107 clearly spells out that accused Shamsher Singh was part and parcel of this conspiracy and he

brought RDX along with accused Jagtar Singh Hawara fully knowing that it will be used for killing Beant Singh and if it is so, the facts disclosed by this accused in his confession are duly corroborated and go to prove a positive agreement in the mind of this accused with the other accused persons and specially with accused Jagtar Singh Hawara and he knowingly joined the conspiracy and helped his conspirators in achieving the purpose of conspiracy.

***CASE AGAINST ACCUSED LAKHWINDER
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1188. The poser for consideration being identical and co-related, the case of the prosecution, against both these accused persons is being taken together as it is alleged by the prosecution that the role of both these accused persons is similar from the stage they joined the conspiracy till its execution. As such in order to avoid repetition, it will be in the fitness of things to deal them jointly.

1189. As discussed above, it is alleged by the prosecution that both these accused persons, who were the old friends of accused Balwant Singh and Dilawar Singh, joined this conspiracy on the asking of both of them and they helped them in different ways, during the stage of preparation as

well as its execution. Accused Lakhwinder Singh, who at the time of this occurrence, was working in the Intelligence Wing of Punjab Police, was associated to know the security arrangements and the movements of the Chief Minister and at the same time, he was having a free access to the Secretariat and could easily arrange accessibility for his co-accused.

1190. Similarly accused Gurmeet Singh was associated in the conspiracy to use his room for preparations as well as for shelter and secondly, he, being an Electrical Engineer, was expert in electric field and helped the accused to prepare the circuit of the belt bomb, which is otherwise a risky work for a lay man.

1191. Accordingly after considering the evidence of the prosecution against both these accused persons, as per the circumstances relating to them and after considering the rival contentions, it comes out that there are following circumstances against both these accused persons, which go to prove that both these accused persons were part and parcel of this conspiracy and did different acts of omission and commission to facilitate its execution and to achieve their objective.

CIRCUMSTANCE NO.1 :

Association of these accused persons with accused Balwant Singh and deceased Dilawar Singh and joining the conspiracy.

1192. It is already held that accused Gurmeet Singh, Balwant Singh, deceased Dilawar Singh and Lakhwinder Singh were all residents of the same locality in Patiala and thus were known to each other and were also associated with each other since long time and were very close to each other. However as argued by the learned defence counsel, the moot question is, whether the association of both these accused persons, with Balwant Singh and Dilawar Singh, is sufficient to link them with this conspiracy.

1193. As far as the association and its thickness is concerned, both these accused have denied their association with accused Balwant Singh but PW-95, Tejinder Pal Singh, an old friend of Balwant Singh, has already deposed that accused Gurmeet Singh, deceased Dilawar Singh, Lakhwinder Singh and Balwant Singh, were old friends and after identifying all these accused persons except Dilawar Singh, he further deposed that being old friends and natives of the same locality, they were concerned with each other.

1194. Not even this, he further deposed that when accused Balwant Singh confessed this

occurrence before him and PW-94, he has categorically named both these accused persons i.e. Gurmeet Singh and Lakhwinder Singh, being part and parcel of this conspiracy with all the details, how it was hatched and how it was planned and executed and when this witness was cross examined by accused Balwant Singh, he alleged that the facts disclosed by this witness in the court, are correct except against accused Gurmeet Singh, who was never associated in this conspiracy and has been falsely implicated, only because of the fact that he is an old friend of deceased Dilawar Singh. However this suggestion of Balwant Singh was denied by PW-95 and he reiterated the role of accused Gurmeet Singh in this conspiracy as disclosed and confessed before him by accused Balwant Singh.

1195. One more circumstance, which proves the association of both these accused persons with accused Balwant Singh and deceased Dilawar Singh, is that PW-99, Chamkaur Singh deposed that on the morning of 31.8.1995, when Dilawar Singh and Balwant Singh were about to leave his house, both these accused, Lakhwinder Singh and Gurmit Singh, reached there and joined them and then all of them went away in the car, Ex.P76. No doubt, during his cross examination, he admitted that he had not seen these accused persons while talking with Balwant Singh and Dilawar Singh but it does not mean that he had not seen them while accompanying Balwant

Singh and Dilawar Singh, specially when he was already knowing both Lakhwinder Singh and Gurmit Singh, even if he saw them from some distance. As such, this fact further proves that both these accused persons were duly associated in this conspiracy.

1196. At the same time, it is already held that the confession made by accused Balwant Singh is voluntarily made and corroborated by the facts and in the confession, he has admitted that the room of accused Gurmeet Singh was used for preparing the bomb and accused Lakhwinder Singh was also associated in the conspiracy.

1197. Even accused Jagtar Singh Tara has named accused Lakhwinder Singh as a conspirator in the conspiracy and also confessed that the belt bomb was prepared in the room of Gurmeet Singh and the circuit of the bomb was connected by accused Gurmeet Singh. The stand of both these accused persons in their confessions clearly lend assurance to the circumstance proved against Lakhwinder Singh and Gurmeet Singh, under section 30 of the Evidence Act.

1198. The stand of both these accused persons is further corroborated by PW-102, Constable Kuljeet Singh, another friend of accused Balwant Singh, before whom also, he disclosed all

the details of the conspiracy as well as the role of accused Lakhwinder Singh and Gurmeet Singh. This witness has categorically deposed that as per accused Balwant Singh, accused Gurmeet Singh has helped them in manufacturing the bomb as he was an old friend of accused Balwant Singh and deceased Dilawar Singh and he also identified accused Gurmeet Singh in the court. His testimony also remained unchallenged despite incisive cross examination by the counsel for the accused persons and there is nothing to disbelieve him.

1199. All the above facts and circumstances clearly show that both these accused persons have intentionally and knowingly joined this conspiracy and abetted and aided their co-conspirators in different ways in order to achieve their planned target i.e. the killing of S.Beant Singh.

CIRCUMSTANCE NO.2 :

Re-painting of Car No. DBA-9598 by both these accused persons along with accused Balwant Singh and deceased Dilawar Singh from PW-51, Surinder Sharma, Painter in furtherance of their conspiracy.

1200. The most material circumstance brought by the prosecution to link these two accused persons with the conspiracy is that as per their prior planning, accused Lakhwinder Singh, who

was known to PW-51, Surinder Sharma, a painter, approached him along with the other accused persons, named above, for the repainting of Ambassador Car no.DBA-9598, Ex.P76 (hereinafter referred as Ex.P76 for brevity) and asked him to change the colour of the car from Steel grey to off-white and thereafter from 26.8.1995 to 30.8.1995, all these four accused persons contacted him in this connection either collectively or individually or in group of two.

1201. Accordingly, let us scan the evidence of PW-51 with reference to the objections raised by learned defence counsel in this regard to assess this aspect of the case.

1202. PW-51, Surinder Sharma, Proprietor of Surinder Spray Paint, Sector 7 Chandigarh, when appeared in the witness box, has deposed that he was already knowing accused Lakhwinder Singh and PW-114, Dalbir Singh @ Maulla, through PW-69, Madanjit Singh @ Channa and accused Lakhwinder Singh had visited his shop on two occasions for denting and painting of a Gypsy and a Jonga. He further deposed that accused Lakhwinder Singh is also having a Scooter bearing registration no.PCP-2085 and on one occasion, he had also done denting and painting of his scooter.

1203. He has also deposed that accused

Lakhwinder Singh was clean shaven those days and he, after identifying accused Lakhwinder Singh in the court, further deposed that on 26.8.1995, this accused along with three other persons came to his shop in an Ambassador Car, Ex.P76, which was of steel Grey Colour. One of the persons, who came along with Lakhwinder Singh, was 24-25 years of age having trimmed beard looking like a Hindu gentleman and the second one was a Sikh Gentleman, having a height of 5.6 feet and was wearing a patka and spectacles, whereas the third one was Hindu Gentleman of 30/32 years of age.

1204. PW-51 further deposed that accused Lakhwinder Singh asked him that the car belongs to his friends and it has to be re-painted in off-white colour and required to be delivered back by 29th of August, 1995. However, when he asked that it is a rainy season and it is not possible to get the work done within the time limit, they insisted that it should be done positively by 30.8.1995 and he should paint the car only from outside. The bargain was struck for a sum of Rs.3,000/-, out of which they paid an advance of Rs.1500/-. After that all of them left his shop saying that they will leave the car in the after noon. However, they returned at about 5/5.30 p.m. and left the car.

1205. As per this witness, on the evening of 26.8.1995, he handed over the car to Neeraj

Kumar, Denter and his shop was closed on 27.8.1995 it being a Sunday. On 28.8.1995, he brought the car from the Denter and started preparing the surface of the paint and during that time, accused Lakhwinder Singh came to his shop at about 6.30 p.m., along with the person having trimmed beard on scooter no.PCP-2085, Ex.P-80, owned by Lakhwinder Singh, which this witness identified in the court, to know the status of car.

1206. He further deposed that on 29.8.1995, he painted the car and parked it inside the Garage of Ranjit Motor Garrage as it was raining. On the same day, the person with trimmed beard and the Hindu Gentleman, who was clean shaven and who came on the first day, came to his shop and inquired about the car but he told them that the paint is being drying and the delivery of the car will be made only on 30.8.1995.

1207. He further deposed that on 30.8.1995, both the same persons again came to his shop at about 11.00 a.m. but the car was still not ready for delivery as it was with Neeraj Kumar Denter for fitting. He further deposed that he had not repainted the car from inside. On seeing the car both those persons asked him to repaint the number plates also. On this, he removed the number plate and sent the same to Tota Ram, who repainted the number plates. During this both those persons

remained in his shop from 11.00 a.m to 4.00 p.m. However, at about 3.30 p.m, one of these persons with the trimmed beard had gone away on the Scooter, Ex.P-80 and came back after sometime with PW-114, Dalbir Singh @ Maulla. After that both those persons took the delivery of the car after paying the balance amount and left his shop, whereas the scooter was taken by PW-114, Dalbir Singh @ Maulla.

1207. Then comes the material facts disclosed by this witness, which proves to be the main link to unearth the entire conspiracy of this case. As per this witness, after the assassination of S.Beant Singh, when he saw the photograph of the Car Ex.P-76, in the news paper on 2.9.1995, he came to know that it is the same car, which he had repainted and then he tried to contact SI Ram Kumar, who was known to him but he was not available on that day. Again on 3.9.1995, he contacted Ram Kumar and met him and he told him about the fact of painting of the car and then SI Ram Kumar took him to the Police Station and ultimately on 4.9.1995, he was interrogated by the Police.

1208. No doubt, the above facts were not mentioned by this witness in his statement made to the Chandigarh Police on 4.9.1995 but he disclosed these facts only in his cross examination, when the

learned defence counsel wanted to know, how the police contacted him and as such, this fact shows that the objection of learned defence counsel as to this explanation is not tenable because it comes on record during the cross examination of this witness and that too, when he was asked to explain this aspect.

1209. After explaining the above facts, PW-51 deposed that on 4.9.1995, he made a statement to the Chandigarh Police about repainting of the car, Ex.P-76 on the request of Lakhwinder Singh and also gave detailed descriptions of all other three persons, who had accompanied Lakhwinder Singh and who took the delivery of the car and he identified the car Ex.P-76 in the Police Station.

1210. He further deposed that on 5.9.1995, he along with Inspector Vijay Kumar had gone to Village Kansal to locate Lakhwinder Singh but he was not found in the Village but on the way back, he (accused Lakwhinder Singh) was found coming on the Kansal Road on his Scooter and on his identification, he (accued Lakhwinder Singh) was apprehended by the police and at that time Balwinder Singh, who was working in his workshop was also present and after his arrest, scooter no.PCP-2085, Ex.P-80 was also taken into possession. On the personal search of accused Lakhwinder Singh, besides other papers, one chit,

Ex.P-51/3 was also recovered and the Scooter and all the articles were taken into possession as per recovery memos, Ex.P51/1 and Ex.P51/2 which was signed by him as well as Balwinder Singh.

1211. He further deposed that thereafter the police party reached Sector 22, Chandigarh, where the person, who accompanied Lakhwinder Singh on 26.8.1995 was arrested and he identified him accordingly and then he came to know that his name is Gurmeet Singh. After this, this witness identified accused Lakhwinder Singh as well as Gurmeet Singh in the court. He further submitted that the personal search of accused Gurmeet Singh was also taken and the articles recovered were taken into possession as per memo, Ex.PW51/4, which includes a chit, Ex.PW51/5 having a writing and the same was also signed by both of them.

1212. He further deposed that on 6.9.1995, he was called by the CBI officials and he again disclosed all the facts to the CBI and also identified accused Lakhwinder Singh and Gurmeet Singh, when shown to him by the CBI. After this, the CBI showed him some photographs out of which he separated four photographs of the persons, who came to his shop on 26.8.1995 and thereafter he identified accused Balwant Singh in the court as the person, who had visited his shop on 29.8.1995 and 30.8.1995 and further deposed that he also came

to know that the fourth person, who was a clean shaven Hindu gentleman, was Dilawar Singh, whose photograph he identified as mark-YY/4. He also identified the photograph mark-SSS of Gurmeet Singh and mark TTT a group photograph showing Dilawar Singh and Gurmeet Singh, mark-UUU of accused Balwant Singh and he signed all these photographs in token of its identification.

1213. At the same time, the factum of repainting of car is also corroborated from the testimony of PW-48, Ranjit Singh, owner of the Ranjit Workshop, Sector 7, Chandigarh, who when stepped into the witness box deposed that in the last week of August, 1995, PW-51 Surinder Sharma, who is running a denting and painting shop on the back side of his workshop and known to him, approached him with a request to allow him to use the backyard of his Service Station, which is a covered shed for painting a car as it has to be delivered on the following day and it was raining on that day, he permitted PW-51 to use his shed for the said purpose. He denied the suggestion that his shed was never used by PW-51 for the painting of car, Ex.P76. No doubt, this witness has neither identified the car nor any of the accused persons but certainly his testimony proves the factum of painting of the car by PW-51 in his shed as stated by PW-51.

1214. In addition to this, this fact is also corroborated by PW-50, Tarlok Nath @ Tota, who is a specialist painter of number plates and the boards and having a shop in Sector 7 market. He has also deposed that in the month of August, 1995, on the request of PW-51, Surinder Sharma, he had painted two number plates of an Ambassador Car with the registration number DBA-9598. This witness has also identified both the number plates, which he had painted on the car Ex.P-76 and also identified the photographs of the number plates mark-PPP and mark-QQQ.

1215. The testimony of both the above witnesses was recorded by the CBI in the month of October, 1995 and it is alleged by the learned defence counsel that PW-51 has nowhere deposed before the Chandigarh Police that he had taken the help of PW-48 and PW-50 for the painting of car and its number plate. As such, both the witnesses have been introduced by the CBI just to corroborate the false stand of PW-51. However, when PW-51 was cross examined on this aspect, he has deposed that he had explained to the Chandigarh Police that he had taken the help of PW-48 and PW-50 for painting of car and number plate but he could not explain why the said fact has not been recorded by the Chandigarh Police in his statement, mark-VVV/1.

1216. Similarly, some more omissions in the

statement of this witness, recorded by the Chandigarh Police vis-a-vis made to the CBI and in the court, were also put to him but he replied that he had disclosed all those facts but why those were omitted is not known to him. Thus, from the testimony of this witness, there is nothing on the file to say that PW-48 and PW-50 have been introduced later on. On the contrary, their testimony corroborates the stand of PW-51.

1217. One more plea of learned defence counsel is that PW-51 has not disclosed the name of Neeraj Kumar Fitter in his statement and his name has also been introduced on the asking of CBI. However, this plea is also baseless because Neeraj Kumar is not a witness relied upon by prosecution and his name was disclosed by PW-51 only when he appeared in the witness box.

1218. Another contention of the learned defence counsel is that the name of SI Ram Kumar of Chandigarh Police along with DSP Abrol is also based on after-thought just to link PW-51 with this case as this aspect was also not disclosed by him either before the Chandigarh Police or before the CBI and has been introduced as an improvement.

1219. However again, this plea is also having no affect on the testimony of PW-51 because as stated earlier, he disclosed these facts only in

cross examination, when he was confronted as to how he came in contact with the Police and as such it can not be considered as an improvement in the testimony of PW-51.

1220. This witness was cross examined by the learned defence counsels for 13 days and there are about 50 pages of his cross examination and all this was done by learned defence counsels with a plea that the entire stand of this witness is false and concocted as none of the accused ever approached him for repainting of the alleged car nor he ever identified any of them.

1221. On the contrary, the photographs of all the accused persons were shown to him and he was also shown the accused persons on the first day of his examination and then he identified them on the second day of examination, alleging that neither accused Laknwinder Singh nor accused Gurmeet Singh were ever arrested in his presence nor they were ever shown to him. As such, the entire endeavour of learned defence counsel is that the identification of the accused persons including accused Lakhwinder Singh and Gurmeet Singh by this witness is manipulated and was only on the basis of the photographs shown to him either during the investigation or at the time of his evidence. As such, let us take this objection at the outset before considering the remaining stand of PW-51.

1222. As far as, the dispute of identification is concerned, it is already held that as per the law laid down by the Hon'ble Apex court, the identification of the accused person for the first time in the court by some witnesses is due identification if there are certain exceptional circumstances which include the ability of the witness to remember the vital statistics of the accused, the period for which he interacted with them and some special features making the identification possible and lastly, where his stand is otherwise probable and corroborated by the circumstances.

1223. Accordingly, in the present case, the evidence of PW-51 when scanned, it comes out that there is nothing illegal in the identification of all the four accused persons including deceased Dilawar Singh by this witness during the trial.

1224. As far as, the identification of accused Lakhwinder Singh is concerned, it is categorically stated by this witness that he was already knowing this accused and this stand of the witness remained unrebutted, as during his cross examination, when he was grilled on this aspect, he has categorically with-stand the same and gave the details how he knows accused Lakhwinder Singh.

1224. The stand of this witness is further corroborated by PW-69, Madanjit Singh @ Channa and this witness disclosed all the details as to how he came to know Dalbir Singh @ Maulla and then how he came to know Lakhwinder Singh and the stand of this witness is that while working in the High Court, he came in contact with Vijay Kumar, who was manufacturing furniture specially Sofa Sets and PW-114, Dalbir Singh @ Maulla was also working with him and they were residing in Village Kansal.

1225. He further deposed that he was also knowing PW-51, Surinder Sharma, a denter and painter of Sector 7, Chandigarh for more than 20 years prior to this occurrence. He further deposed that accused Lakhwinder Singh @ Lakha was also residing in Village Kansal and he was introduced to Lakhwinder Singh by Dalbir Singh @ Maulla and then he introduced Lakhwinder Singh to Surinder Sharma and as such all of them knowing each other.

1226. Although, this witness has also deposed about the act and conduct of accused Lakhwinder Singh after the assassination of Beant Singh but this aspect will be taken later on.

1227. In addition to this, PW-114, Dalbir Singh @ Maulla, who is also an important witness, has also corroborated this fact and deposed that accused Lakhwinder Singh came in contact with

Surinder Sharma through him and PW-69. Even PW-114 deposed about the friendship of accused Lakhwinder Singh with deceased Dilawar Singh and Balwant Singh and also deposed that accused Lakhwinder Singh was having a Scooter bearing registration no.PCP-2085, Ex.P80.

1228. He also deposed about the association of all the accused persons with each other and their confidence in each other. Lastly, he has also deposed that on 30.8.1995 on the asking of Lakhwinder Singh, he took accused Balwant Singh to the shop of PW-51 and on reaching there, he found that accused Dilawar Singh was already present there along with the Car, Ex.P76 and when he was confronted about the car, he disclosed that the car belonged to his friend and they are going to attend some wedding in the same and thereafter both of them left the shop of PW-51.

1229. He also disclosed that after that, he returned back with the scooter of Lakhwinder Singh and handed over the same to him at his house and also disclosed him that his friends Dilawar and Balwant Singh had left the shop of PW-51 in the car Ex.P76. Thus, from the stand of both these witnesses, it is proved that accused Lakhwinder Singh was already known to PW-51.

1230. As far as the plea of learned defence

counsel that PW-51 has not disclosed the name of PW-69 and PW-114 in his statement before the Chandigarh Police is concerned, again there is no substance in this plea because PW-51 has explained that he has disclosed to the Chandigarh Police that he came in contact with accused Lakhwinder Singh and PW-114 Dalbir Singh @ Maulla through PW-69 Madanjit Singh @ Channa, who was already known to him for more than 15 years.

1231. He further stated that he has also disclosed to the Chandigarh Police that accused Lakhwinder Singh, who is also working as a driver in Punjab Police, had also visited his shop 2-3 times for repair of police vehicle as well as his own Scooter no.PCP-2085, Ex.P80 and he also stated that he does not know why the Chandigarh Police had not recorded these facts in his statement u/s 161 Cr.P.C. As such, this plea also proved in vain to falsify either the stand of PW-51 or PW-69 and PW-114.

1232. As far as the identification of accused Gurmeet Singh by PW-51 is concerned, again there is nothing on record to say that PW-51 was having no occasion to identify this accused. It is categorically stated by this witness that he met accused Gurmeet Singh for the first time on 26.8.1995, when he came to his shop along with accused Lakhwinder Singh and he categorically

disclosed the description physical statistics of accused Gurmeet Singh by saying that he was a Sikh youth, aged about 24/25 years, having a height of 5.5 inch with fair complexion and flowing beard and a slim and active personality.

1233. At the same time, he has categorically stated that after the arrest of accused Lakhwinder Singh on 5.9.1995, when accused Gurmeet Singh was also arrested as per the facts disclosed by accused Lakhwinder Singh, he identified him as the person who accompanied Lakhwinder Singh on 26.8.1995 along with the other two accused persons. At the same time, he was the only Sikh Gentleman, who accompanied Lakhwinder Singh to his shop and as such there was a special aspect of his identity and at the same time, he has identified Gurmeet Singh within a period of 10 days, which in the facts & circumstances of the case can not be considered as a long period.

1234. At the same time, this witness has categorically deposed that on 6.9.1995, when he was interrogated by the CBI, some photographs were shown to him out of which he separated the photographs of all the four persons including Lakhwinder Singh, who came to his shop on 26.8.1995, mark-UUU of accused Balwant Singh, being a man with a trimmed beard and long height, mark-SSS of accused Gurmeet Singh, who was the only Sikh

Gentleman with them and mark-TTT, which was a group photograph having the photo of accused Dilawar Singh and Gurmeet Singh, mark-YY/4 individual photograph of deceased Dilawar Singh and in the photographs, which are part of the record, we have also the photograph of accused Lakhwinder Singh, who was clean shaven at that time with the signatures of PW-51. Lastly, PW-51 has also identified accused Gurmeet Singh in the court without showing him any photograph etc.

1235. One more controversy raised by learned defence counsels as to the identity of both these accused persons is that on 6.9.1995, when both these accused persons were produced before CJM, Chandigarh for their police remand, after their arrest by the CBI, an application was filed by the defence counsel for declining the police remand and during the arguments of that application, it was argued that they be remanded to judicial custody as they wanted to get their identification parade done.

1236. However, as is clear from the proceedings, this plea was declined by the CJM with the observations that at present the CBI has taken a stand that they do not have any eye witness before whom the TI parade could be done. However neither there is written reply of the CBI in this regard nor the statement of any responsible officer

was recorded by the learned C.J.M. before making the above observations and perhaps it comes out that since neither there was an application from the accused persons for their test identification nor there was any proper reply of the CBI was taken by the learned CJM and as such the above observations were made only on the basis of oral assertions, whereas it is now argued by the CBI that both these accused persons were already arrested in the presence of PW-51 Surinder Sharma and co-employee Balwinder Singh and they had already identified them and apart from this, they have no other eye witness from whom these accused persons can be identified in any test identification parade. However whatever may be the facts and circumstances qua these proceedings, it has no bearing on the factum of identification of these accused persons in the court, which is substantive evidence.

1237. As per learned defence counsel, this approach of the Magistrate was totally unfair as had the plea for Test identification parade would have been allowed, the dispute of identity of both these accused from PW-51, Surinder Sharma and Balwinder Singh another worker of PW-51, should have been settled once for all, as both these witnesses, who have never seen these accused persons or who never know them, could have not been able to identify these accused.

1238. However, after considering this contention along with the evidence and the facts and circumstance of the case, it comes out that as discussed earlier, it is settled by the Hon'ble Apex Court in **Dana Yadav Vs. State of Bihar's case (Supra)**, that even when a prayer for test identification on the behest of accused persons has been declined and then those accused have been identified in the court, no benefit of non-conducting the TI Parade can be given to the accused because the main thrust should be as to whether evidence of a witness in court as to the identity of an accused, is trustworthy or not and if the answer is in affirmative, the fact the prayer for holding test identification parade was rejected or although granted, but no such parade was held, would not in any manner affect the evidence adduced in the court in relation to the identity of the accused provided such an evidence is free from doubt.

1239. In the above case, the authority **Jadu Nath Singh's case (Supra)**, relied upon by the learned defence counsel is also considered, where in also it was held that failure to hold test identification parade of the accused is not fatal in all cases. Similar proposition of law was settled by Hon'ble Apex Court in **Malkhan Singh's case (Supra)** and **Suresh Chander Bahri's case**

(Supra) .

1240. At the same time, in **Dana Yadav's case (Supra)**, the Hon'ble Apex Court also held that apart from the ordinary rule that identity of a accused for the first time in the court, in a case where the accused is not already known to the witness or where he has not been seen by the witness, without conducting test identification parade, is not admissible in evidence, are subject to certain exceptions. As per the Hon'ble Apex Court, where the court is impressed by a particular witness, whose testimony, it can safely rely without such or other corroboration; that if a witness had any particular reason to remember about the identity of an accused; where a witness had a chance to interact with accused for sometime and had an opportunity to notice the distinctive feature of the accused, which leads assurance to his testimony in court, the evidence of such identification in court for the first time by such a witness can not be thrown away for want of test identification parade. On the contrary, the accused can be convicted only on the basis of such identification, without the same being corroborated either by previous identification or by any evidence.

1242. Similarly in **Umar Abdul Shakur's case (Supra)**, the Hon'ble Apex Court also settled that

there is no legal provision, which inhibits the admissibility of evidence of identification by way of photographs because such an identification will become substantive evidence only when it is confirmed by the witness in the court, where he has to identify the accused.

1243. Even in **D.Gopal Krishanan's case (Supra)**, an authority relied upon by learned defence counsel, the above said proposition of law was reiterated and the Hon'ble Apex Court held that there are no statutory guidelines in the matter of showing photographs to the witnesses during the stage of investigation. But nevertheless the police is entitled to show the photographs to confirm whether the investigation is going in the right direction but this can be done only if the witness had given the identifying features of the assailant, which can be confirmed by showing the photographs but not a single photograph of the suspect. However, if the suspect is available for identification or for video identification, the photographs shall never be shown to the witness in advance.

1244. Not even this, as submitted by learned defence counsel even under the provisions of Police and Criminal Evidence Act, 1894, which is prevalent in England, the photographs could be shown to the witnesses only under certain specified

conditions and it can be put only when the description of the suspect given by the witnesses, has been recorded and the supervising officer is unable to confirm the description and where the suspect is known to the Police but not to the witness, only identification parade should be pressed into service. To the same effect is the principle laid down by the Hon'ble Apex Court in **Laxmi Pat Choraria's case (Supra)**,

1245. As far as the right of the accused to seek test identification parade is concerned, this question was considered by the Hon'ble Apex Court in **Surinder Narian @ Muna Pandey Vs. State of U.P., AIR, 1998, Supreme Court, Page 192**. In this case, during the investigation, accused moved an application before learned Magistrate claiming that he is not known to the witness and the test identification parade should be ordered. However, this prayer of accused was declined and during the course of trial, the accused was identified by the witnesses and was convicted.

1246. When this fact was challenged before the Apex Court, with a similar plea as is put forward in this case, the Hon'ble Apex Court held that the identification parades are held not for the purpose of giving defence advocates material to work on, but in order to satisfy investigating officer, the bonafide of prosecution witnesses and

the Hon'ble Apex Court held that the failure to hold test identification parade even after demand by the accused is not always fatal and it is only one of the relevant factors to be taken into consideration along with the other evidence on record. If the claim of ocular witnesses that they knew the accused is found to be true the failure to hold identification parade is inconsequential. However, grant or refusal of such a prayer would not necessarily ensure to the benefit of either parties nor the same would be detrimental to their interest.

1247. It was also held that needless to say the statements made at identification parade are not substantive evidence at the trial and as such there is no requirement that the Magistrate making an enquiry should listen to the statement made by the witnesses at an identification parade, which will not be an evidence at enquiry. Even the prosecution is not bound to examine all the witnesses sited by it including those, who are related to identification specially when failure to hold test identification parade of accused is not fatal in all cases. This very principle was also reiterated in **Dana Yadav Vs. State of Bihar's case (Supra)** as well as in **Jadu Nath Singh Vs. State of U.P's case (Supra)**.

1248. Similarly in **Tek Chand Vs. State, AIR**

1965, Punjab, page, 146 the Hon'ble Punjab & Haryana High Court held that the accused can not compel the prosecution to hold their identification parade during the investigations and there is no law or procedure under which the Magistrate can pass such order

1249. Applying the above proposition of law to the facts in hand, it comes out that as discussed earlier the accused Lakhwinder Singh was already known to PW-51. Whereas, accused Gurmeet Singh was firstly identified by the PW-51 through his photograph mark-TTT and mark-SSS and then he was identified by PW-51 on 5.9.1995, when he was arrested by the Chandigarh Police and again on 6.9.1995, when he confirmed the identity of both these accused persons before the CBI.

1250. Above all, while giving the details of the persons, who came to him with Lakhwinder Singh, this witness had given all the distinctive features of all the those persons and he also clarified that one of those person was a Sikh gentleman with flowing beard having a particular height, complexion, personality, etc. which clearly matches with the features of accused Gurmeet Singh and was thus rightly identified by him along with the photographs of the other persons, accused Balwant Singh and Dilawar Singh, who both were looking as Hindu Gentleman at that time being

without long hairs.

1251. Last but not the least, this witness has also identified both these accused persons along with accused Balwant Singh in the court even before saying that he identified them through photographs during the investigations. As such, the plea of learned defence counsel that the testimony of this witness is procured and manipulated and is not tenable. As such, the authorities relied upon by learned defence counsel, **Joginder Singh @ Nagender Singh's case (Supra) and Gadam Vijay Bhaskara Reddy's case (Supra)**, are of no help to the defence to dispute the testimony of PW-51 or the other witnesses of the prosecution in this regard.

1252. As far as the other authorities relied upon by learned defence counsel, as mentioned in para no.270 of this judgment, on this aspect is concerned in **Jai Mal's case (Supra)**, a test identification parade was conducted but it was found to be doubtful and on those facts, it was held that simply because of the fact that the witness has given the description of the assailant is not sufficient to believe his identification in the parade. However, in the present case as discussed earlier, accused Gurmeet Singh, Balwant Singh and deceased Dilawar Singh had been identified by PW-51 on the basis of description

given by him before the police and because of the fact that he had occasion to interact with them for sufficient long time.

1253. Similarly in **Rakesh Harilal Kahar's case (Supra)**, an test identification parade conducted without asking the witness as to whether he had opportunity to see the suspect or his photograph prior to the parade, was found to be doubtful but the facts of the present case are clearly distinguishable.

1254. Similarly, in the case law **Maan Singh's case (Supra)**, in a case of assault by a person, who was not known to the witness, his identification before the court for the first time was found to be doubtful for want of test identification parade, specially when the witness had no occasion either to see him or to interact with him but again the facts of this case are different from the authority relied upon.

1255. Similarly in **Rama Nathan's case (Supra)**, the hon'ble Apex Court while commenting upon the importance of the identification parade held that where in identification parade the witness has identified the culprit, although, he did not know him earlier, it is sufficient to link him with the case even if it was not shown that the accused were kept with muffled faces till

identification. However, in the present case, no test identification parade was conducted but the witness had identified the accused during investigation as well as in the court.

1256. Similarly in **Khan Singh @ Ujjagar Khan's case (Supra)**, the Hon'ble Allahabad High Court held that where no link evidence has been adduced to show that the accused was not shown to any witness during the time of his arrest till lodging in jail, it is not proper to rely upon the test identification parade but again the facts of this case are clearly distinguishable. The same proposition was settled by Hon'ble Apex Court in **State Vs. V.C.Shukla's case (Supra)**.

1257. However, in the present case as discussed above, the question of identity of accused persons is duly established from the testimony of this witness coupled with the other circumstantial evidence and as such all the authorities are of no help to the defence.

1258. As discussed earlier, this witness was cross examined by the learned defence counsels for 13 days but despite his lengthy and incisive cross examination, they could not bring out anything from which it could be said that the identity of these accused persons by him is not admissible in evidence. No doubt, this witness

admitted that when he identified the photographs of these accused persons before the CBI, he was not knowing the name of any of these accused persons except Lakhwinder Singh, it makes no difference specially when he has stated that their names were disclosed to him by the CBI then and there. At the same time, he also denied the suggestion of learned defence counsel that on the photograph the name of accused persons were already written and it helped him to identify them.

1259. As far as some of the contradiction in the testimony of this witness vis a vis, his statements recorded by the Chandigarh Police on 5.9.1995 and CBI on 6.9.1995, are concerned, these are there but these are bound to occur because of the lengthy and repeated cross examination of learned defence counsels for 13 days during the period of five months from 25.2.1997 when his examination-in-chief was recorded partly for the first day till 19.7.1997 when his cross examination was completed.

1260. At the same time, as per the proposition of law mentioned above, these discrepancies are not material, as these were pointed out to dispute the question of identity, which is otherwise held to be duly proved in favour of the prosecution. Not even this, when this witness was cross examined as to these

contradictions on 26.5.1997, 27.5.1997, 28.5.1997 continuously, in answer to those facts, he has explained that whatever was asked from him by the Chandigarh Police, he answered accordingly and whatever was asked by CBI, he answered accordingly.

1261. Even when some of the facts disclosed by him before the CBI were put to him saying that why he had not disclosed those before the Chandigarh Police, he alleged that those facts were not asked by the Chandigarh Police. At the same time, as settled in **Mata Din's case (Supra)**, the statements given by the witnesses before the police are meant to be brief statements and could not take the place of evidence in the court. As such, if there are minor omissions, the same will not justify a finding by the court that the witness concerned is a self contained liar.

1262. Last but not the least, even where some facts has not been enquired by the Police during the investigations but disclosed by the witness in the court, it can not be said that the proof of such facts before the court makes the testimony of the witness doubtful, as no benefit of the faulty and defective investigations can be given to the accused unless it has for reaching affect on the case of the prosecution.

1263. Now let us consider the other grounds

raised by learned defence counsel to challenge the stand of PW-51. As per the learned defence counsel, the stand of PW-51 that on 26.8.1995, accused Balwant Singh was also one of the members of the group, which came to him for the repaint of the car, is belied by the stand of accused Balwant Singh in his confession, wherein he alleged that on 26.8.1995, he was at Patiala till evening.

1264. However, after going through the confession of accused Balwant Singh, it comes out that he has nowhere stated that on 26.8.1995, he remained at Patiala from morning to evening. On the contrary, he alleged that they had fixed a time for meeting in the morning of 26.8.1995 with Paramjit Singh @ Kala for getting the colour of the car changed into 'off-white' colour. He further disclosed that on 27.8.1995, Dilawar Singh came to him and disclosed that because of the rainy season, it will take some time to change the colour of the car. He has also stated that on 30.8.1995 he and Dilawar Singh went to the shop of Painter for taking the delivery of the car but it was not ready and they could get the delivery of the car only in the evening.

1265. He also stated that at that time, they were having the scooter of Lakhwinder Singh and Lakhwinder Singh sent his friend to bring back the scooter from the shop of the painter. This is

what has been stated by PW-51. No doubt, accused Balwant Singh has tried to twist some facts by not naming the particular accused as to his role on a particular day with obvious purpose to save his friends but the over all stand of his confession on the fact in dispute clearly fits in with the stand of PW-51 and thus corroborates his testimony and also supplement the confession of Balwant Singh and if it is so, no benefit of this plea can be given to the accused.

1266. No doubt, as submitted by learned defence counsel, accused Balwant Singh and Jagtar Singh Tara in their confession alleged that accused Paramjit Singh, facing trial separately, was deputed to get the car re-painted but it was nowhere stated that it was only his duty to do so. At the same time, it is also admitted by both these accused that accused Paramjit Singh was residing at Delhi those days and as such there was no question of saying that he could get this work done alone.

1267. On the contrary, accused Lakhwinder Singh, who was knowing PW-51, Surinder Sharma, was also deputed to do so and he himself took the remaining accused persons with him to justify the changed colour of car and to show that the car belongs to them and they require the repainting as early as possible as they want to use the car for a marriage, and PW-51 has also supported this fact.

Thus, this plea also proved in vain to derive any benefit for the accused.

1268. In view of the above discussed legal and factual position, it is held that the prosecution has successfully proved that accused Gurmit Singh and Lakhwinder Singh along with their co-accused Balwant Singh and deceased Dilawar Singh, got the car, Ex.P-76 repainted from PW-51, as per their plan to show it as an official vehicle to seek entry in the Secretariat, to hit their target as per the plan, mastermind and coordinated by accused Jagtar Singh Hawara.

CIRCUMSTANCE NO 3 :

Preparation of belt bomb in the house of accused Gurmeet Singh by all the main accused persons namely Jagtar Singh Hawara, Balwant Singh, deceased Dilawar Singh, Lakhwinder Singh and Gurmeet Singh on the intervening night of 28th/29th August, 1995.

1269. As disclosed above, accused Jagtar Singh Tara and Balwant Singh in their respective confessions confessed that after reaching Mohali, along with all the inputs of the belt bomb including RDX etc. all of them assembled in the room of accused Gurmeet Singh, which was on the first floor of house no.981, Phase-IV Mohali and on the night of 28.8.1995, they re-made the bomb by

adding some more splinters etc in the RDX. Thus let us consider the evidence of prosecution to adjudicate this controversy, which goes to the root of the case, as far as factum of conspiracy, is concerned.

1270. The most material witness of the prosecution to prove this aspect is PW-101, Satwinder Singh @ Simpy, who was sharing the room with accused Gurmeet Singh, in which the bomb was prepared.

1271. Accordingly, when he stepped into the witness box, he deposed that he knows accused Gurmeet Singh, who was his class-fellow in Thaper Polytechnic Institute, Patiala and after completing their diploma, both of them took employment at Chandigarh and both of them were searching a house to live. Ultimately, both of them took a room on rent on the first floor in house no.981 Phase-IV Mohali, owned by PW-63, Avtar Singh, and on the ground floor, there was a STD booth of Avtar Singh and one Puran Chand was the tenant on the other portion.

1272. He further deposed that in the year 1994 in the marriage of sister of Gurmeet Singh, he introduced him with Dilawar Singh and thus he knows Dilawar Singh. With this back-ground, he deposed that on 28.8.1995, some friends of Gurmeet Singh,

had visited him in the said room and they reached at about 7.00 p.m. He was knowing one of them previously, who was Dilawar Singh and the remaining were introduced to him by Gurmeet Singh as Lakhwinder Singh, Balwant Singh and Bhai Ji, who was later on identified as Jagtar Singh Hawara.

1273. He further deposed that since there was shortage of space, Gurmeet Singh asked him to sleep in the STD booth of Avtar Singh and he agreed. Accordingly, he went to sleep in the STD booth. However, when he returned back to his room to take a bed sheet, he found that accused Gurmeet Singh and his friends were sitting on the floor and they had spread a news paper and were doing something and after taking the bed sheet, he came down and slept in the STD booth for that night. On the next morning, when he went to his room, Gurmeet Singh and all his four friends were there and after getting ready, he left for his job.

1274. He further deposed that in the evening at about 7/7.30 p.m., when he returned back, he found that only Balwant Singh and Bhai Ji were present in the room and they gave him a message that his friend Raman had visited him. As per this witness, after that he went to the house of his aunt and remained there for the night of 29.8.1995. He also deposed that while leaving the room, he found that some police uniforms are

hanging on the peg of their room, which were neither of him nor of Gurmeet Singh.

1275. He further deposed that on 10.9.1995, he was called by the CBI and when he reached there, he found that accused Gurmeet Singh and Lakhwinder Singh were already present there and he identified them and also identified the photographs of the other friends of Gurmeet Singh, who visited him in their room. After that he identified those photographs as mark-00000 of accused Lakhwinder Singh, mark-PPPPP of Dilawar Singh and Gurmeet Singh, Ex.DC/2 of Bhai Ji @ Jagtar Singh Hawara and mark-QQQQQ of Balwant Singh and deposed that he had signed all those photographs in the token of its identification.

1276. He further deposed that in the month of January, 1996, he identified accused Balwant Singh and Jagtar Singh Hawara, in the custody of the CBI. Lastly, he identified all the four accused persons, Balwant Singh, Lakhwinder Singh, Gurmeet Singh and Jagtar Singh Hawara in the court.

1277. This witness was cross examined by learned defence counsels with a defence that neither he was present in his room on 28th and 29th of August nor any of the accused persons ever visited Gurmeet Singh nor they were seen by this witness. On the contrary, this witness was

pressurised to make this statement as he was also arrested because he absconded from his room on 1.9.1995 and he agreed to depose against the accused persons, when he was tortured by the CBI. However, this endeavour of learned defence counsel proved in vain.

1278. Simply because of the fact that this witness was not available in the room after 31.8.1995 till 10.9.1995, it can not be said that he was a suspected person, having some concern with this crime. On the contrary, he has denied the suggestion of learned defence counsel that he was in the illegal custody of CBI from 5.9.1995 to 10.9.1995 and was tortured and pressurised to become a witness.

1279. No doubt, during the cross examination, when he was called again to identify all the four accused persons, who had already been identified by him during his examination-in-chief on 7.12.1999 and he could identify only accused Gurmeet Singh and Balwant Singh but it is already stated by him, he was already knowing the deceased Dilawar Singh. But he has also reiterated that he identified all those persons during investigations through their photographs and he denied the suggestion that he identified those persons in the court during his examination-in-chief only after seeing the photographs.

1280. Above all, the stand of PW-101 is further corroborated by PW-104, Raman Kumar, who is friend of PW-101 and he accordingly deposed that he is working in the same office with PW-101 Satwinder Singh @ Simpi, who had been residing in house no.981, Phase-IV Mohali, along with accused Gurmeet Singh and he had been visiting them and thus knowing Gurmet Singh.

1281. He further deposed that in the last week of August, 1995, he went to the house of PW-101, Satwinder Singh and when reached there, he found that four persons were sitting in the room, one of whom was a kesh dhari Sikh Gentleman and three were clean shaven but PW-101, S.P.Singh, was not there and on his enquiry, those four persons stated that SP.Singh has not yet reached and he then requested them to pass on a message to S.P.Singh about his visit and on the next date, PW-101 called back to him as per the message given by him and on his asking PW-101 disclosed that all those four persons were from Patiala.

1282. He further deposed that during investigations, the CBI had shown him some photographs but he could not identify those four persons, although, he identified accused Gurmeet Singh in the court being already known to him. He had denied the suggestion that he never visited

that room nor he found any four persons sitting there. No doubt, this witness has not identified any of the accused persons but his testimony certainly proves that apart from Gurmeet Singh, four persons were present in the room as stated by PW-101, who is room partner of accused Gurmeet Singh and thus his stand in the court in this regard is true.

1283. As mentioned earlier, it is alleged by the learned defence counsels that this witness has taken a false stand of taking a room jointly with Gurmeet Singh, as PW-63 has categorically deposed that this house was initially taken on rent by this witness and later on, he brought Gurmeet Singh, as co-tenant. No doubt, PW-63 Avtar Singh has stated so but it makes no difference because the testimony of this witness is relevant only as to the presence of all the above accused persons on 28.8.1995 and 29.8.1995 in that house and as to how Gurmeet Singh had taken this house on rent is immaterial particularly when it is admitted case of accused Gurmeet Singh that he was residing as a tenant in a room in house no.981, Phase IV, Mohali. In view of this, the objection raised by the learned defence counsel proved in vain.

1284. On the contrary, PW-63 Avtar Singh had deposed that in the month of August, 1995, accused Gurmeet Singh and PW-101 were his tenants

and on one day, PW-101 requested him to allow him to sleep in the STD booth during the night as some relatives will stay in the room resulting into shortage of space and he also deposed that it was either 28.8.1995 or 29.8.1995. He has also identified accused Gurmeet Singh in the court, as his tenant.

1285. Not even this, PW-68, Puran Chand who was another tenant of PW-63 in the ground floor, also corroborated the stand of PW-101 and PW-63, as he deposed that accused Gurmeet Singh, present in the court, along with PW-101, was occupying the first floor of H.No.981 Phase-IV Mohali, owned by PW-63, Avtar Singh and he was a tenant in the ground floor in a tin shed.

1286. He further deposed that on 28.8.1995, some persons were in the room of Gurmeet Singh and at about 11.30 p.m., in the midnight because of terrible tooth ache, he went to the room of Gurmeet Singh to have some medicines and found that five persons were sitting in the room including Gurmeet Singh and out of the remaining four persons, three were clean shaven and one was Sikh Gentleman. However, when he asked for the medicine, Gurmeet Singh told he has no medicine with him and as such he returned back to his tin shed.

1287. He further deposed that he has seen

all those five persons on 26/27/28.8.1995 and he had also saw one of them on 29.8.1995 and 31.8.1995 in the room of Gurmeet Singh. He had also deposed that two of the boys had come in a car and one on a Scooter and one of them was wearing a uniform.

1288. He further deposed that on 6.9.1995, he was called by the CBI, where some photographs were shown to him out of which, he picked up photographs mark-FFFF, who was also identified by him in the custody of CBI and who was Jagtar Singh Hawara. He also identified the photograph mark-YY/3, mark-GGGG and mark-HHHH and stated that these were of those other three persons, who visited the room of Gurmeet Singh, from 27.8.1995 to 31.8.1995 along with Jagtar Singh Hawara.

1289. He further deposed that on 8.9.1995, he identified accused Gurmeet Singh in the CBI custody, where on interrogation, accused Gurmeet Singh also suffered disclosure statement, Ex.PW68/A and one Parnab Sain was also present, at that time and in that statement accused Gurmeet Singh disclosed all the facts as mentioned there in and thereafter, accused Gurmeet Singh led the police party to his room and one Doctor was also accompanied the CBI party and on reaching the house, Gurmeet Singh opened the same and then the room was searched by the CBI and some recoveries were made including pieces of news paper, card

boards and on those articles there were some black colour substance and after converting the same into sealed parcels, the same was taken into possession as per the recovery memo, Ex.PW68/B.

1290. He also identified the envelope when shown to him as article Ex.P82 along with the seals of the CBI, Ex.P83 along with his signatures and identified that it is the same envelope in which the polythene bag containing news papers etc. was sealed. He also identified that polythene bag, Ex.P84, the card board box Ex.P85 and another card boards case, Ex.P86, three pieces of card board recovered from the room of Gurmeet Singh collectively marked as Ex.P87 and three pieces of news paper collectively marked as Ex.P88.

1291. He further deposed that apart from this, all other articles found in the room of accused Gurmeet Singh, were also taken into possession as per memo, Ex.PW68/C. Not even this, he has also identified the accused Gurmeet Singh, Balwant Singh and Jagtar Singh Hawara in the court by touching them as the persons, who were seen by him visiting the room of accused Gurmeet Singh between 26.8.1995 to 30.8.1995.

1292. During his cross examination this witness again reiterated that he identified the photographs of these accused persons in the month

of September, 1995 and thereafter he identified accused Jagtar Singh Hawara and Balwant Singh in the CBI Office in January, 1996. He further alleged that he had shown about 9-10 photographs, out of which he picked up the photographs of those four persons.

1293. As far as the testimony of this witness relating to search and seizure proceedings in the room of accused Gurmeet Singh is concerned, it will be taken up later on but on the aspect of visit of the accused persons in the room of Gurmeet Singh, this stand remain unrebutted. No doubt, there are some contradiction in the testimony before this court, vis a vis statement made before the CBI but these are bound to occur as this witness was cross examined for 5-6 days repeatedly.

1294. One more witness, who deposed about the visit of some persons in the house of accused Gurmeet Singh, is PW-55, Reema Kahlon who was working as STD Operator in the booth of PW-63, Avtar Singh and she accordingly deposed that she had seen some boys visiting the house of accused Gurmeet Singh, who was residing in the first floor of that building and during investigations, she had identified the photographs of some of those persons, including mark YY/2 of deceased Dilawar Singh and the same was also signed by her on its reverse side.

1295. No doubt, she has not identified any other accused either during the investigations nor during her testimony in the court. However, during her cross examination, she deposed that about 7-8 photographs were shown to her, which were of 2-3 different persons and she denied the suggestion that no photograph was shown to her.

1296. It is already held that identification of the suspects on the basis of photograph during the investigations is permissible and PW-101 Satwinder Singh @ Simpy, had categorically identified all the four accused persons, who were present in the room of accused Gurmeet Singh, with him during the period 26th August to 31st August, 1995 and there is nothing on the file to disbelieve the stand of this witness in this regard.

1297. As far as the plea of learned defence counsel that the story of prosecution regarding preparation of bomb in the house of Gurmeet Singh stands falsified from the confession of Balwant Singh, wherein he has confessed that the belt bomb was prepared by him and Jagtar Singh Hawara on 26.8.1995 and 27.8.1995 itself and that too, at Patiala, is concerned, there is no force in this plea because as stated earlier accused Balwant Singh, had made the confession on 23.1.1996, when

all his co-accused persons were already arrested and the evidence was collected against them and fully knowing this fact, he tried to twist some facts while making his confession in order to save his comrades and specially Gurmeet Singh.

1298. This fact is further proved from the fact that when accused Balwant Singh cross examined PW-95, Tejinder Pal Singh, before whom he suffered extra judicial confession, which is already held to be admissible in evidence, he alleged that the facts disclosed by PW-95 are correct except accused Gurmeet Singh. Thus, accused Balwant Singh intentionally tried to exclude the role of accused Gurmeet Singh in this conspiracy.

1299. However, at the same time, he has admitted that after coming from Patiala, all of them assembled in the room of Gurmeet Singh and stayed there for the night of 28.8.1995 and even on the morning of 29.8.1995, accused Lakhwinder Singh, Dilawar, Jagtar Singh Hawara, Gurmeet and he himself were present and even in the evening Lakhwinder again came to that room with Dilawar Singh. If it is so, this aspect further shows that whatever has been stated by PW-101 and PW-68, is correct and duly corroborated from the other material facts and it also supplement the confessions of accused Balwant Singh and Jagtar Singh Tara. Thus, this plea proved in vain to

falsify the stand of prosecution as far as the act & conduct of accused Gurmeet Singh and his role in this conspiracy is concerned.

1300. However, whatever may be the facts and circumstances, the testimony of all the above discussed witnesses is sufficient to say that as disclosed by accused Balwant Singh in his confession, accused Gurmeet Singh was also associated in this conspiracy, being a friend of Dilawar Singh and all of them remained in the house of accused Gurmeet Singh and Balwant Singh had even stated that they have also discussed the final plan to hit the target in the house of Gurmeet Singh and stayed there for a night along with Dilawar Singh.

1301. He also confessed that during their stay in the house of Gurmeet Singh, Jagtar Singh Hawara was also there but he left the room and even he and Dilawar Singh went to Kansal Village to see Lakhwinder Singh. No doubt, as stated earlier, accused Balwant Singh tried to twist some facts regarding this aspect but he could not do so because the over all conclusion from the evidence led by the prosecution and the facts disclosed in the confession of Balwant Singh and Jagtar Singh Tara clearly link accused Gurmeet Singh and Lakhwinder Singh with this conspiracy.

1302. Now let us take some individual

circumstances brought on the file against both these accused persons which further link them with this conspiracy and fortify the case of the prosecution.

The individual role of accused Gurmit Singh.

1303. First of all, let us take the evidence of the prosecution in this regard showing the individual role and circumstances against accused Gurmeet Singh.

CIRCUMSTANCE NO. 1 :

Arrest of the accused Gurmeet Singh in this case coupled with the conspiracy raised by the defence in this regard.

1304. As per the prosecution on 5.9.1995, as per the facts disclosed by PW-51 that accused Lakhwinder Singh and others, were responsible for the paint of the crime car, Ex.P76; accused Lakhwinder Singh was arrested by PW-238 in the presence of PW-51 and after that on interrogation, he disclosed the name of accused Gurmeet Singh and took the police party to Sector 22 in SCO no.2463--64, where accused Gurmeet Singh was found standing in a verandah and he was accordingly arrested and after his search, he was interrogated in the presence of PW-51, Surinder Sharma, who also

identified him and then both of them were handed over to the CBI.

1305. Much has been argued by learned defence counsel about the arrest of accused Gurmeet Singh and recovery of the service record from PW-67, T.P.Yadav. As per learned defence counsel, it is alleged by the prosecution that accused Gurmeet Singh participated in the conspiracy between 25.8.1995 to 31.8.1995, which means during these days, he would have been absent from his duties and the prosecution was obliged to collect this record and it was accordingly collected but the same has been suppressed.

1306. To substantiate this plea, he submitted that as per PW-241, on 9.9.1995 he took into possession the attendance and leave record of Gurmeet Singh from PW-67, as per memo of recovery, Ex.P67/A, vide which the attendance register of the staff of BPL Engineering from January to September, 1995 along with certain letters and the Engineers' Daily Report of accused Gurmeet Singh, for the relevant time was taken into possession.

1307. However, during the trial the prosecution has placed on the record only the leave card of accused Gurmeet Singh and the Engineers' Daily Reports have not been made part of record with a mala fide intention as it would have shown

that accused Gurmeet Singh was very much present on his job during the alleged period from 25.8.1995 to 31.8.1995 and even in the leave card, this fact is clear as the accused Gurmeet Singh has been shown on leave only on 31.8.1995 and 4.9.1995 and that too, is doubtful as there is a cutting in the digit '3' of 31.8.1995.

1308. As per learned defence counsels, all these facts and circumstances show that accused Gurmeet Singh was never arrested on 5.9.1995 as alleged nor he was having any concern with this case as he was on duty during this alleged period of conspiracy and a false story has been cooked-up to implicate him only because of the fact that he was friend of deceased Dilawar Singh, without there being any link and role of this accused.

1309. However, after considering this aspect, it comes out that this dispute is unnecessarily raised because whether this accused attended his duties during the period of conspiracy or not is not a ground to link him with the conspiracy but the moot question is whether he was sharing the conspiracy with his co-conspirators even if he was not playing any direct role in its preparations. At the same time, as per the prosecution, the main role of this accused is to help the co-accused in preparation of bomb in his room, being an Electrical Engineer to complete the

circuit and fuse of the bomb and how to detonate it and to give them shelter. This aspect is duly proved on the file as per the detailed discussion made above.

1310. Similarly, whether the accused was arrested from the market of Sector 22 or from his office on 5.9.1995 as indirectly admitted by PW64 and PW-67, his co-employees is also not a relevant point to doubt the arrest of this accused. Similarly, the dispute of leave card and attendance register is also of little importance qua his connection with this conspiracy. Even, a perusal of leave card, Ex.PW64/D coupled with attendance register, Ex.PW64/A along with relevant entries, Ex.PW64/B and Ex.PW64/C, it comes out that in the month of August, 1995, this accused was present on his duties on 21.8.1995 onwards till 31.8.1995 and he has been shown on causal leave on 31.8.1995, as stated by PW-64 and PW-67. If it is so, the plea of learned defence counsel that there is a cutting in the leave card at point-B showing change of digit '2' into '3' is without any basis because as stated earlier on 21.8.1995, this accused was on his duties.

1311. Similarly, whether the accused was on leave or not after this blast, is also not a relevant thing, specially when even PW-64 and PW-67, who have proved the above records, admitted

that accused Gurmeet Singh attended his duties on 5.9.1995 after being on leave on 4.9.1995 and he was also arrested on 5.9.1995. Even if it is admitted that he was arrested from his office, it makes no difference rather it shows that he was actually arrested on 5.9.1995.

1312. Similarly, the non-production of the Engineer Daily Reports has also no affect on this aspect as even if it is presumed that he was on his duties during the period of conspiracy, it makes no difference. At the same time, even Balwant Singh in his confession alleged that on 29 & 30.8.1995, Gurmeet Singh attended his duties and the actual stay of these accused with him is only on the night of 28.8.1995 till 31.8.1995, which is duly established on the record.

CIRCMSTANCE NO 2 :

Search of room of Gurmeet Singh and recovery of incriminating articles Ex.P87 and Ex.P88 i.e the pieces of card board and news papers having the traces of RDX, in consequences of disclosure statement of accused Gurmeet Singh.

1313. As discussed earlier, PW-68 Puran Chand has categorically deposed that during the investigations on 8.9.1995 accused Gurmeet Singh suffered a disclosure statement, Ex.PW68/A in his

presence and in the presence of PW-70, Parnab Sain in which he disclosed his role in this conspiracy along with other facts saying that he was part and parcel of this conspiracy and the belt bomb used by deceased Dilawar Singh was prepared in his room in H.No.981 Phase-IV Mohali and he has checked the circuit of the bomb and fuse and his friends Dilawar Singh, Balwant Singh, Lakhwinder Singh and Jagtar Singh @ Hawara used to assemble in his room in this regard for planning etc.

1314. He also disclosed that accused Balwant Singh and Jagtar Singh Hawara brought RDX and other articles to prepare the bomb on a card board kept in a black bag and they have prepared the bomb after mixing the RDX with other articles on a news paper and put it in the belt bomb and all those articles are concealed by him in his room and he could get the same recovered.

1315. PW-70, Parnab Sain has corroborated the stand of PW-68 in this regard by reiterating the facts as stated by PW-68 Puran Chand. Both these witnesses further deposed that after making disclosure statement by accused Gurmeet Singh, the CBI officials joined one Mr.Verma from Forensic Laboratory and then accused Gurmeet Singh took them to his house and after opening the door, he himself brought out a pink coloured bag from the perchatti (etic) and on search of the same, some pieces of

card board and news paper and another envelope were recovered, which are already marked as P-84 to P-87

1316. They further deposed that Dr.Verma also collected some particles from the floor of the room into a phial, Ex.P91 and then all the articles were sealed in a parcel and were taken into possession as per the memo of recovery, Ex.PW68/B, which is signed by both of them as well as by the accused. When PW-70 was cross examined by learned defence counsels to challenge him by saying that he never visited the room of Gurmeet Singh nor any recovery proceedings were made, he denied the suggestions of defence counsel in this regard. On the contrary, he disclosed all the relevant facts, which shows that he was very much present during the search and seizure proceedings and there is nothing on the file to doubt his testimony as no motive or enmity has been attributed qua him to depose falsely against the accused.

1317. He has categorically stated that there was STD booth in the ground floor, which was lying closed at that time and a poster bearing the writing "bachelors den" was pasted out side the door of the room. He even disclosed that PW-68 stated that he is residing on the ground floor. He has denied the suggestion that before their reaching there, the Chandigarh Police and the Punjab Police had already conducted the search.

1318. Similarly, a suggestion was put to PW-68 that the lock of the room was broken by him and it was not opened by accused Gurmeet Singh and then the search was conducted was denied by him. At the same time, this plea is self-contradictory as on one hand, the defence alleged that this witness was not present during the search proceedings and on the other hand, it was suggested to him that it was he, who broke opened the door and the search was made.

1319. No doubt, because of the lengthy cross examination, there were some contradictions and omissions here and there but those are immaterial and bound to occur and can not be made basis to discard the testimony of this witness.

1320. As far as the plea of learned defence counsel that no site plan of search and seizure proceedings have been prepared by the Investigating Officer, which further makes the search doubtful is concerned, it is also without any basis because as stated earlier non-preparation of the site plan is itself not sufficient to say that no search was conducted.

1321. Similarly, the plea of learned defence counsel that no personal belongings of accused Gurmeet Singh were recovered from the said

house has any bearing on the case of prosecution, rather it shows that the accused Gurmeet Singh had vacated the room after this operation, without surrendering its actual possession to the landlord. Perhaps while doing so, the accused could not clean the entire room and left some traces of RDX in the room, which were recovered by PW-160, R.S.Verma, a Ballistics Expert and the incriminating articles concealed by him were also recovered in consequence of his disclosure statement, which distinctively relate to the discovery of material facts in hand and thus admissible in evidence, as per the provisions of Section 27 as well as Section 8 of the Evidence Act, as per the proposition of law discussed above in this regard.

1322. At the same time, the testimony of both these witnesses is further corroborated by PW-160 R.S.Verma, an expert of the Forensic Laboratory, who when appeared in the witness box has also deposed about the search and seizure proceedings carried out in the house of accused Gurmeet Singh and he also deposed that during the search, he recovered small particles from the room and after examining the same then and there, he found the traces of RDX.

1323. Not even this, he also lifted the particles into a small phial, Ex.P91 for test in the laboratory and then deposed that after

examining the same in the laboratory as per his report, Ex.PW160/1 again found the traces of the RDX on all those articles collectively marked as article P-87 and P-88 consisting of pieces of card board and news papers.

1324. This witness has categorically deposed that he took both the samples of the incriminating articles recovered from the house of accused Gurmit Singh along with the some sample of blackish material stated to be explosive recovered from the house of Gurmit Singh and after extracting and scraping the blackish material from the news papers, card board pieces, polythene carry bag etc., he conducted the various laboratory tests and found traces of RDX explosive in those articles having percentage of more than 81%.

1325. The testimony of this witness has been challenged by learned defence counsels on the plea that had this witness been present during the search proceedings, he would have signed the recovery memo, Ex.PW68/B but the same has no signatures of this witness, which itself shows that he was not at all present during the alleged search. At the same time, he alleged that he has tested the material at the spot but he has not prepared any report in this regard on the spot, which further shows that he was not present during these proceedings.

1326. However, after going through the testimony of this witness and surrounding facts and circumstances, it comes out that he accompanied the CBI party not as a witness of search and seizure but in the capacity of expert of explosives and at the same time he conducted the test at the spot only to prima-facie satisfied himself about the samples for the purpose to examining the same in the laboratory and if it is so, this testimony can not be discarded on the alleged plea specially when he is a expert witness, who has no animosity for deposing falsely and giving a false report.

1327. At the same time, the pieces of news papers were again examined by PW-165, Roop Singh, who after examining the news paper chemically and instrumentally, again confirms the presence of RDX based high explosives in the stains available on the newspaper pieces, Ex.P88, vide his report Ex.PW165/5.

1328. The report of this witness has been challenged by learned defence counsel alleging that as per PW-165, he received newspaper pieces Ex.P88, in his division on 8.11.1995, whereas it was allegedly recovered on 8.9.1995 and there is no evidence on the file where it remains for these two months. However, after considering the evidence, it comes out that this plea is also without any basis

because as stated earlier, PW-160, R.S.Verma after the recovery proceedings from the house of accused Gurmit Singh sealed all the articles along with the sample of blackish matter and took the same to Laboratory on 8.9.1995 itself and examined those articles in his Laboratory and prepared his report, Ex.PW160/1 dated 27.9.1995, which was forwarded to the CBI on 12.10.1995 and he has further explained that the testing process continues from 8.9.1995 to 21.9.1995, which means these parcels remained with PW-160 upto 12.10.1995, when he forwarded the report and thereafter those were sent to document division and then those were sent to PW-165. Thus, from this it is proved that these articles reached the CFSL on the date of recovery itself and as such there is nothing on the file to doubt its intactness during the time it remained in the Laboratory. As such, this plea is also lacks any advantage for the defence.

1329. In view of the above discussed legal and factual position, it is proved beyond doubt that after arranging all the inputs and making preparations at Patiala, all the accused persons namely Jagtar Singh Hawara, Balwant Singh, deceased Dilawar Singh and Jagtar Singh Tara reached Mohali and settled themselves in the house of accused Gurmeet Singh, who being an old friend of deceased Dilawar Singh and Balwant Singh was also associated in the conspiracy along with Lakhwinder Singh and

all further operations were carried out from his house and the same was used as a shelter place. And thus, this circumstance clearly proves that accused Gurmeet Singh and Lakhwinder Singh were part and parcel of this conspiracy.

1330. Now let us take certain individual circumstances against accused Lakhwinder Singh and Gurmeet Singh, which further link them with this conspiracy. First of all, let us take the evidence of the prosecution in this regard qua accused Gurmeet Singh individually.

**The individual role of accused
Lakhwinder Singh.**

1331. Now let us consider the evidence which proves the individual role of accused Lakhwinder Singh, in addition to his above discussed joint role, which further fortifies the case of the prosecution in this regard.

1332. As discussed earlier, it is proved that this accused being a constable in the Intelligence Wing of Punjab Police, was having an advantage of free access in the secretariat and for that, he was associated to keep track of the movements of late CM as well as his programmes and lastly to arrange a smooth entry in the precincts of the Secretariat.

1333. In this regard, it is already proved that accused Lakhwinder Singh, Gurmeet Singh, deceased Dilawar Singh and Balwant Singh were old friends and as such, they became members of this conspiracy. Similarly, it is also proved that as per their conspiracy accused Lakhwinder Singh took deceased Dilawar Singh, accused Gurmeet Singh and Balwant Singh to the shop of PW-51, Surinder Sharma and the colour of the Car, Ex.P76 was got changed.

1334. In addition to this PW-116, Anil Kumar, who is old friend of accused Lakhwinder Singh, also deposed that 3-4 days prior to the blast, accused Lakhwinder Singh visited his shop along with Dalbir @ Maulla and asked him to alter a khaki pant and to loose its waist to the maximum possible and then he collected it back. No doubt, this witness alleged that Dalbir Singh @ Maulla was with him at that time but Dalbir Singh @ Maulla has not stated so. However, it makes no difference because the fact remains that Lakhwinder Singh was making preparations as per the conspiracy.

1335. It is further case of the prosecution that after taking the delivery of car on 30.8.1995, the main duty of Lakhwinder Singh was to stay at Secretariat and to keep vigil on the whereabouts and movements of late Beant Singh and to assist accused Dilawar Singh and Jagtar Singh Tara for a

smooth entry in the building of the Secretariat and the last duty of this accused was to drive the car back after the blast but because of his ill-health he was deputed to take stock of the things for which he was also deputed in the Secretariat as mentioned above.

1336. As per prosecution, on 31.8.1995, accused Lakhwinder Singh went to Secretariat and started waiting for the CM and his movements and when Balwant Singh and Dilawar Singh came to him in the Secretariat in the after noon, he informed that Beant Singh had already reached Secretariat and after that accused Balwant Singh and Dilawar Singh went back and then returned back in the evening in the car, along with accused Jagtar Singh Tara and accused Lakhwinder Singh remained at Secretariat. Immediately after the blast, he was spotted by so many persons in the Secretariat including PW-114 Dalbir Singh @ Maulla as well as PW-69, Madanjit Singh @ Channa and PW-187, Mewa Singh and when he met PW-114 Dalbir Singh @ Maulla, on 2.9.1995, he also made an extra judicial confession of the conspiracy with all its details.

1337. Accordingly, after going through the evidence of prosecution and on comparison of the same with the above story, it comes out that because of the following additional circumstances, it is further proved that this accused was part and

parcel of this conspiracy.

CIRCUMSTANCE NO.1 :

Presence of this accused in the Secretariat on 30.8.1995 and 31.8.1995 and even after the blast vis-a-vis the plea of alibi of this accused.

1338. As stated earlier, there is sufficient evidence on the file, which proves that as per their plan, accused Lakhwinder Singh was spotted in the Secretariat to keep surveillance on the movements of the Beant Singh and to know his whereabouts.

1339. In this regard, first of all we have the testimony of PW-97, Shanker Lal, who was running a Dhaba in the canteen of Secretariat at the relevant time and he deposed that on 31.8.1995 he was present at his Dhaba and at about 1.00 p.m, Madanjit Singh @ Channa, came to his Dhaba for taking lunch and during that PW-114, Dalbir Singh @ Maulla and accused Lakhwinder Singh @ Lakha, who was already known to him, also came there and they also took lunch and after taking the lunch, they went away.

1340. It is further stated by this witness that at that time, accused Lakhwinder Singh @ Lakha was clean shaven but at the time of his statement,

he was a baptised Sikh and as such he could not identify him in the court. It was suggested to him that accused Lakhwinder Singh was not clean shaven and like a Hindu Gentleman at that time but he denied this suggestion. However, whatever may be the facts and circumstances, this witness was already knowing this accused and the relevant fact that he saw him in the Secretariat on 31.8.1995 is duly proved.

1341. At the same time, PW-114 Dalbir Singh @ Maulla deposed that on 31.8.1995, at about 12.00 noon, when he was present in the Secretariat near Annapurna Dhaba, accused Balwant Singh met him on his Scooter, with one person on pillion and asked him about Lakhwinder Singh but he replied that he does not know his whereabouts, on which he left that place. After some time, accused Lakhwinder Singh also came there and met near Annapurna Dhaba and informed him that Balwant Singh is looking for him, on which accused Lakhwinder Singh left towards Secretariat.

1342. This witness further deposed that at about 1.00 p.m., Lakhwinder Singh again met him and on his asking, he accompanied him to his office and then they went back to the Secretariat and after leaving him at the tea shop of Mewa Singh, Lakhwinder Singh went towards MT Section. After sometime, Lakhwinder Singh returned back and then

both of them went to the dhaba of Shanker Yadav on the Scooter of Lakhwinder Singh, where Madanjit Singh Channa was already having his meal and they joined him and after taking lunch, they returned back to the room of Lakhwinder Singh.

1343. He further deposed that on 31.8.1995 in the evening when he was present near the Rock Garden, he heard the blast and then at about 8.00 p.m., when he came to his shop of his brother, accused Lakhwinder Singh met him there and disclosed him that S.Beant Singh has been killed in the bomb blast but he was perplexed at that time.

1344. As stated above, as per this witness, on 2.9.1995, when he saw the photograph of the car in the news paper, he asked Lakhwinder Singh that it is the same car, which was taken by Balwant Singh and Dilawar Singh from the shop of painter and then Lakhwinder Singh asked him, 'yes', it is the same vehicle and what should he do. Accused Lakhwinder Singh also sought advise from this witness as to whether he should run away and then in the evening when PW-114 along with Surjit Singh and Lakhwinder Singh assembled in the room of C.Balwinder Singh in Village Kansal, accused Lakhwinder Singh made an extra judicial confession about his role in this bomb blast along with all the details of the conspiracy and persons involved. Even on 3.9.199 he and PW-69, again met Lakhwinder

Singh in his room at Village Kansal.

1345. Then, PW-69 also corroborated all the facts as disclosed by PW-114. As per this witness, he was also knowing accused Lakhwinder Singh through PW-114, Dalbir Singh @ Maulla and he also introduced Lakhwinder Singh with PW-51 Surinder Sharma. He further deposed that in the year 1995, accused Lakhwinder Singh was clean shaven and he after identifying him in the court, further deposed that accused Lakhwinder Singh also introduced him with his friend Dilawar Singh, whose photograph he identified in the court, as mark-TTT at point-A, mark-TTT/1, mark-YY/3 to mark-YY/5.

1346. He further deposed that on 31.8.1995 at lunch time, he met accused Lakhwinder Singh @ Lakha at the dhaba of Shanker Yadav along with Dalbir Singh @ Maulla and they all took lunch together and then went to the house of accused Lakhwinder Singh but came back immediately. Again on 2.9.1995, he again met Lakhwinder Singh along with Dalbir Singh @ Maulla and on their asking, he accompanied them and then they took liquor together.

1347. Even PW-185, Mewa Singh, who is running a tea shop near the Secretariat, deposed about the presence of Lakhwinder Singh in the Secretariat on 30.8.1995 and 31.8.1995. As per this

witness, he was known to Lakhwinder Singh @ Lakha, who was working as a driver in MT Section of Punjab Police and who was residing in Village Kansal. This witness also proved that this accused was also having a scooter bearing no.2085 and he was also knowing his friend Dalbir Singh @ Maulla and Dilawar Singh.

1348. As per this witness, on 30.8.1995, accused Lakhwinder Singh and his friend Dilawar Singh visited his shop and he identified the photograph of Dilawar Singh, Ex.PSSSSS and of Lakhwinder Singh, Ex.PW111/3. He also disclosed that accused Dilawar Singh when came to his shop asked for Lakhwinder Singh. He further deposed that during investigations, he also identified the photograph of one more person, who came with Lakhwinder Singh as, Ex.PW185/A. He also deposed that accused Lakhwinder Singh visited his shop for the last time on 31.8.1995, along with his other two companions at 4.00 p.m.

1349. Much has been argued by learned defence counsel to challenge the testimony of all the above mentioned witnesses. However, after considering their cross examination, coupled with the facts and circumstance of the case, it comes out that there is nothing on the file to disbelieve their version because had PW-97, Shanker Yadav having any interest for the prosecution, he would

have identified accused Lakhwinder Singh in the court. But he has stated the facts, which were in his knowledge without any addition or improvement.

1350. Similarly, the association of accused Lakhwinder Singh with Dalbir Singh @ Maulla is also duly proved on the file and there is nothing on the file to disbelieve his testimony. Simply because of the fact that Dalbir Singh @ Maulla is not a man of high status and for that matter, he is drug addict also is not sufficient to disbelieve his testimony. Above all, the stand of both these witnesses is further corroborated by PW-101, Satwinder Pal Singh @ Simpi, who has also identified accused Lakhwinder Singh as one of the persons, who was present in the room of Gurmeet Singh.

1351. Resultantly, from the testimony of all these witnesses, which is based on proved facts, it is proved that from 30.8.1995 onwards accused Lakhwinder Singh was very much present at Chandigarh and he was also present in the Secretariat and this fact proves that he was performing his duties being conspirator regarding the movements of Beant Singh and informing his co-conspirators about the same and the stand taken by accused Balwant Singh and Jagtar Singh Tara in their confession, in this regard, is duly substantiated.

1352. To know the role of this accused, there was no necessity to discuss the evidence of all the above discussed witnesses. However, the reason for the same, is that counsel for accused Lakhwinder Singh has put forward a plea of alibi for Lakhwinder Singh, saying that he was transferred as a gunman with the deceased Member of Parliament, Surinder Singla and he had already joined his duty with him at Delhi, as proved on the file by DW-12 and if it is so, there is no question of his presence and participation in the conspiracy during the material period from 25.8.1995 to 31.8.1995.

1353. However, after going through this aspect coupled with the contention of learned Public Prosecutor, it comes out that accused Lakhinder Singh has failed to prove his plea of alibi with cogent and reliable evidence.

1354. Admittedly, he has examined DW-12, S.K.Singh, who being an employee of the Office of SP Security, Punjab, deposed that on 11.7.1995, C.Lakhwinder Singh was directed to report to Sh.Surinder Singla, the then Member of Parliament as driver and as per the DDR No.9 dt.11.7.1995, he was relieved with directions to join there.

1355. However, the question comes whether this testimony is sufficient to conclude that

accused Lakhwinder Singh joined his duties at Delhi and if it was so, he never returned back to Chandigarh. However, the answer is obviously in negative because it is well settled principle of law that plea of alibi, is question of fact, which must be substantiated on record with proper evidence. However, in the present case this fact is missing as even DW-12, S.K.Singh has admitted that he can not say, whether C.Lakhwinder Singh actually joined his duties as driver with Surinder Singla, as per the relieving order and if so, for what period and on what days he actually remained with him.

1356. Side by side, it is also alleged by accused Lakhwinder Singh that on 1.9.1995, when he came to Chandigarh to take his salary, he was arrested in this case. However, no record whatsoever has been brought on the file by the accused to prove that he actually joined his duties with Surinder Singla, stated to be dead now, then MP and remained with him till 1.9.1995 and thus, he failed to prove his so called plea of alibi. Even if it is believed that Surinder Singla, MP is no more, this fact can be proved from other available evidence but as stated earlier, no such statement has been brought despite the fact that the onus to prove to this fact was upon accused Lakhwinder Singh.

1357. Needless to say, a plea of alibi is a defence, which is required to be proved by the accused and no benefit of deficiency of evidence on that aspect, from the side of prosecution can be made basis to decide that plea, as settled by the Hon'ble Apex Court in **Thakur Prasad Vs. State of MP, AIR, 1954, SC, page 30**. Thus the fact remain that there is no evidence on the file to say that accused Lakhwinder Singh had joined his duties at Delhi and as such he was not present at Chandigarh.

1358. On the contrary, the entire factual evidence as discussed above shows that this accused was very much present in Chandigarh during the time of this conspiracy from 25.8.1995 to 31.8.1995 and even thereafter from 1.9.1995 till his arrest.

1359 As far as the plea of learned defence counsel that the service record of accused Lakhwinder Singh has not been brought to prove his transfer orders is concerned, it makes no difference because the question of his joining at Delhi has not been proved on the file, even if it is presumed that he was transferred from Chandigarh.

1360. No doubt, learned defence counsel has pointed out certain contradictions and discrepancies in the testimony of PW-97, PW-114, PW-69, PW-185 but needless to say all those

contradictions are irrelevant and have no affect on the otherwise proved stand of all these witnesses as to the presence of accused Lakhwinder Singh at Chandigarh, during the period of this conspiracy and thus, this circumstance complete the chain of link as far as the role of accused Lakhwinder Singh with the conspiracy is concerned.

CIRCUMSTANCE NO. 2 :

Use of Scooter No.PCP-2085 of Lakhwinder Singh in the conspiracy.

1361. It is already proved on the file that in the entire conspiracy accused Lakhwinder Singh, has used a scooter No.PCP-2085. This scooter has been used by Lakwhinder Singh as well as his co-accused, in the preparations of this conspiracy. However, the disputed fact in this regard is as to the ownership of the scooter, as it has been argued by the learned defence counsel that there is no evidence on the file to prove that this scooter was actually owned by Lakhwinder Singh.

1362. However there is not much controversy on this aspect, as admittedly in the record of Registering Authority, this scooter is still shown in the name of Harjit Singh but it does not mean that he never sold it. On the other hand, PW-47 Harjit Singh, who was the registered owner of this scooter, when appeared in the witness box, deposed

that after purchasing the scooter from PW-45, Vijay Kumar Chopra, he further sold the same to PW-54, Deep Inder Mehta alias Vipin in the presence of PW-46 Manjit Singh and executed all the documents for the transfer of the same along with an affidavit and handed over the scooter to him. PW-46 Manjit Singh also corroborated the stand of this witness in toto.

1363. Similarly PW-45, Vijay Kumar Chopra has proved the factum of sale of scooter to PW-47 Harjit Singh. In addition to this, PW-54 Deep Inder Mehta has deposed that he had purchased the scooter from PW-47, Harjit Singh and later on he sold the scooter to Lakhwinder Singh, who was known to him and after taking the entire sale consideration, he handed over the scooter to Lakhwinder Singh as per the receipt, Ex.PW-54/1, which is signed by the parents of Lakhwinder Singh, as he wanted to get it transferred in their name.

1364. In addition to this, it is already discussed that PW-51, Surinder Sharma, PW-69 Madanjit Singh alias Chhanna, PW-114 Dalbir Singh alias Maula, PW-116 Anil Kumar, a Tailor Master of Village, PW-97 Shankar Yadav, PW-185 Mewa Singh and PW-113 Surinder Kumar, who all are the old friends of Lakhwinder Singh, have categorically deposed that accused Lakhwinder Singh was having this scooter and it is further proved on the file

that during the period 26.8.1995 to 31.8.1995 and even thereafter, this scooter was in possession of accused Lakhwinder Singh and the same was used by him and his co-accused persons in connection with this conspiracy.

1365. Not even this, on 5.9.1995, when accused Lakhwinder Singh was arrested, he was driving this very scooter and the same was also taken into possession after his arrest, which further shows that this scooter was purchased by him from PW-54 and was used by him in this conspiracy.

CIRCUMSTANCE NO. 3 :

Recovery of slip Ex.PW51/3, containing signatures and hand writing of Lakhwinder Singh, to the effect that he wants death of CM Punjab.

1366. One of the circumstances relied upon by the prosecution to link accused Lakhwinder Singh with this conspiracy is, that on 5.9.1995, when he was arrested, in the presence of PW-51, along with his scooter no. PCP-2085, Article Ex.P80, on his personal search, some papers were recovered including slip, Ex.PW51/3 which were taken into possession as per memo, Ex.PW51/2.

1367. As far as the plea of learned defence counsel that the recovery of this slip from the

possession of the accused is doubtful and can not be believed, is concerned, there is nothing on the file to say so because this slip was recovered during the search of the accused Lakhwinder Singh in the presence of PW-51, whose testimony is held to be cogent and reliable and as to how and why the accused was keeping this slip with him can only be explained by the accused, as there is nothing on the file to say that it was fabricated or procured. It was taken into possession immediately when it was recovered and both PW-51 and another witness Balwinder Singh, have signed this slip. Thus, this circumstance further corroborates the case of the prosecution and the role and participation of this accused in the entire conspiracy.

1368. To prove that this slip bears the signatures and hand writing of accused Lakhwinder Singh, the prosecution has examined PW-59, C.Balwinder Singh, who was a co-employee of this accused working in the same security wing of the Punjab Police and he accordingly deposed that he had the occasion to see accused Lakhwinder Singh while writing and signing documents and during the investigations, when slip, Ex.PW51/3 was shown to him, he identified and stated that it contains the hand writing and signatures of Lakhwinder Singh. He also identified the hand writing and signatures of accused Lakhwinder Singh on the account opening form Ex.P59/J, on his leave applications Ex.PW59/A

to Ex.PW59/D. Bank deposit slips Ex.PW59/E to Ex.PW59/I.

1369. In addition to the testimony of PW-59, the questioned writing and signature of accused, Lakhwinder Singh, on the slip, Ex.PW51/3, as well as on the bank deposit slips, were examined by PW-166 T.R.Nehra, a document expert and he as per his report, Ex.PW166/26, found that the question signatures and hand writings, mark as Q-1 to Q-4 on Ex.PW51/3, Ex.PW59/E to Ex.PW59/I and Ex.PW51/5 are similar to the specimen hand writing and signatures of Lakhwinder Singh, marked as A-1 to A-4, on the leave application of Lakhwinder Singh, Ex.PW59/A to Ex.PW59/D and on the passport file of accused Lakhwinder Singh mark A-89 to A-97, as well as the specimen hand writing and signatures of this accused taken in the presence of PW-105, on the sheets, Ex.PW105/62 to Ex.PW105/20, marked by the expert, as S-65 to S-123.

1370. It is already held that the plea of learned defence counsel regarding taking of specimen hand writing and signature of accused, without the consent of the accused and orders of the Magistrate, is without any force as there was no such legal requirement at that time and the CBI was competent to do so under section 4 of Prisoners Identification Act.

1371. As far as the plea of learned defence counsel that PW-166 T.R.Nehra, in his cross examination admitted that these hand writings did not match with each other, is concerned, there is no such admission on the part of T.R.Nehra in this regard. On the contrary, he has denied the suggestion that the disputed hand writing and signatures of Lakhwinder Singh, Q-1 to Q-4 are different from the specimen hand writing of accused Lakhwinder Singh. As such, the facts disclosed by PW-59 are corroborated by the expert and if it is so, the question comes how the slip, Ex.PW51/3 is relevant for this case.

1372. As discussed earlier on the slip Ex.PW51/3, accused Lakhwinder Singh has written that **"I want death only CM Punjab, you know the time after p.m"**. It also bears the signatures of accused Lakhwinder Singh. The language of this slip clearly spells out that he being a part and parcel of this conspiracy was having every intention to kill the CM Punjab.

CIRCUMSTANCE NO. 4 :

Extra judicial confession of Lakhwinder Singh before PW-114.

1373. As discussed earlier, PW-114, while giving his association with accused Lakhwinder

Singh and his other friends, also deposed that on 2.9.1995, when he and Lakhwinder Singh went to the house of C.Baljinder Singh to take liquor, accused Lakhwinder Singh disclosed him about his role in the conspiracy and admitted that Dilawar Singh had killed the CM by this bomb blast and he along with Balwant Singh and Hawara etc are involved in the bomb blast and he is apprehending that police might kill him. Even on the morning of 2.9.1995, when PW-114 confronted Lakhwinder Singh, on seeing the photograph of the car in the news paper, accused Lakhwinder Singh admitted that it is the same car, which was taken by accused Balwant Singh and Dilawar Singh.

1374. This stand of PW-114 was challenged by the learned defence counsels on various grounds firstly that as per PW-114, accused Lakhwinder Singh has made this confession while he was drunk and as such this confession is not admissible in evidence and secondly, why accused Lakhwinder Singh would make this confession to PW-140, who is a simple and poor person and who can not help him in any manner. And lastly that this confession can not be considered as admissible evidence as neither it was complete nor clear and at the same time, it was not voluntarily made by the accused Lakhwinder Singh. With these averments, he alleged that no benefit of this stand of PW-114 can be given to the prosecution.

1375. However, after going through the statement and other surrounding circumstances, it comes out that there is no merit in any of the grounds put forward by the learned defence counsel to challenge the making of extra judicial confession by accused Lakhwinder Singh, before PW-114.

1376. Before taking the technical grounds, let us see whether the extra judicial confession made by accused Lakhwinder Singh before PW-114 is voluntarily made and what is legal position in this regard.

1377. As far as the legal position relating to the relevancy of extra judicial confession and how it is to be proved, is concerned, in **State of Rajasthan Vs. Raja Ram,V (2003) SLT 45-III(2003) CCR 189 (SC)-2003 8 SCC 180**, it was held that

“An extra judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the Court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any Court to start with a presumption that extra judicial confession is a weak type of evidence. It would depend on the nature of

the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra judicial confession can be the basis of a conviction if it passes the test of credibility."

It was further observed :

"20. If the evidence relating to extra judicial confession is found credible after being tested on the touchstone of credibility and acceptability, it can solely form the basis of conviction. The requirement of corroboration as rightly submitted by the learned Counsel for the respondent-accused, is a matter of prudence and not an invariable rule of law"

1378. Then in the case of **Gagan Kanojia and Anr. Vs. State of Punjab, IX (2006) SLT 406= (2007) CR 89 (SC)=Criminal Appeal Nos.561-62 and 563 of 2005**, decided on 24.11.2006, the Hon'ble Apex Court opined:

"Extra-Judicial confession as is well known, can form the basis of a conviction. By way of abundant caution, however the Court may look for some corroboration. Extra judicial confession can not ipso facto be termed to be tainted. An extra-judicial confession, if made voluntarily and proved can be relied upon by the Courts."

1379. Similarly, in **Nazir Khan & Others Vs. State of Delhi, V (2003) SLT 14-III (2003) CCR 173 (SC)=106 (2003) DLT 70(SC)= 2003 8 SCC 461**, the Hon'ble Apex Court held that:

"A free and voluntary confession is deserving of the highest credit, because it is presumed to flow from the highest sense of guilty"

1380. Similarly, in **Kishore Chand Vs. Himachal Pradesh, AIR 1990 Supreme Court, page 2140** the Hon'ble Apex Court again reiterated the same principle and held as under:

"An unambiguous extra-judicial confession assesses high probative value force as it emanates from the person who committed the crime and is admissible in evidence provided is free from suspicion and suggestion of its falsity. But in the process of the proof of the alleged confession the Court has to be satisfied that it is a voluntary one and does not appear to be result of inducement, threat or promise envisaged under S.24 or was brought about in suspicious circumstances

to circumstance Ss.25 and 26. Therefore, the Court has to look into the surrounding circumstances and to find whether the extra judicial confession is not inspired by any improper or collateral consideration or circumvention of the law suggesting that it may not be true one. For this purpose the Court must scrutinize all the relevant facts such as the person to whom the confession is made, the time and place of making it, the circumstances in which it was made and finally the actual words used by the accused. Extra-judicial confession if found to be voluntary can be relied upon by the Court along with other evidence on record. Therefore, even the extra judicial confession will also have to be proved like any other fact. The value of the evidence as to the confession depends upon the veracity of the witness to whom it is made and the circumstances in which it came to be made and the actual words used by the accused. Some times it may not be possible to the witness to reproduce the actual words in which the confession was made. For that reason the law insists on recording the statement by a Judicial Magistrate after administering all necessary warnings to the accused that it would be used as evidence against him."

1381. Recently, in **Kulwinder Singh Vs. State of Punjab, II (2007) SLT 225=Criminal Appeal No.675 of 2006**. decided on 5.12.2006, the Hon'ble Apex Court held that:

"the evidentiary value of an extra judicial confession must be judged in the fact situation obtaining in each case. It would depend not only on the nature of

the circumstances but also the time when the confession had been made and the credibility of the witness who testifies thereto."

1382. The above discussed legal principles were also reiterated by the Hon'ble Apex Court in a most recent case **Aloke Nath Dutta & Ors Vs. State of West Bengal CCR 2007 S.C, 391.**

1383. Applying the above settled propositions of law to the facts in hand, it comes out that, it is proved on the file, beyond any reasonable doubt, that PW-114, Dalbir Singh @ Maulla, was a very close friend of accused Lakhwinder Singth and both of them used to meet almost for every day and as such both of them were having confidence in each other and if it is so there was every possibility that the accused Lakhwinder Singh, who was very frightened and perturbed about the whole episode as well as the death of his friend, Dilawar Singh in the episode, was eager to express his feelings that too with a intention to seek advise of his friend, as to what should he do as he was apprehending danger to his life in the hands of the Police.

1384. As far as the plea of learned defence counsel that this confession was made by accused Lakhwinder Singh, when he was drunk, is concerned, this plea is totally mis-conceived because PW-114 has nowhere admitted that accused Lakhwinder Singh

was drunk, when he made this confession. On the contrary, the testimony of PW-114 shows that on 2.9.1995 in the morning, when he confronted Lakhwinder Singh about the photograph of the car published in the news paper, he admitted that it is the same car which has been taken by accused Balwant Singh and Dilawar Singh and even at that time, he indirectly admitted his role when he sought the advise of PW-114 as to whether he should run away.

1385. Not even this, even thereafter, when PW-114 along with Lakhwinder Singh, went to the house of C.Baljinder Singh, accused Lakhwinder Singh suffered this extra judicial confession, not after taking the liquor but immediately after reaching the house of C.Baljinder Singh, when Surjit Singh, who was also with them, went inside the house. No doubt, thereafter they might have taken liquor but this does not mean that the extra judicial confession made by accused Lakhwinder Singh was under influence of liquor.

1386. Even PW-114 has not been cross examined by the learned defence counsel on this aspect. On the contrary, he stated that the confession made by accused Lakhwinder Singh at about 8.30 p.m, when they reached in the room of C.Baljinder Singh and this fact further shows that this confession was made before taking the liquor.

In these circumstances, the authority relied upon by learned defence counsel on this plea, entitled **C.K.Ravindern Versus State of Kerala, AIR, 2000, page 369**, is not applicable to the facts in hand because in that case the person before whom the extra judicial confession was made, take liquor and after the consumption of the liquor the confession was made and on those facts, it was found to be not voluntarily made. However, in the present case as stated earlier, this aspect is missing.

1387. At the same time, it is also proved that PW-114 was very confident friend of Lakhwinder Singh and as such he was having full faith and understanding with him and thus made the extra judicial confession. In **Gopi Chand Vs. State of Haryana, 2005 (4), RCR, Criminal, page 778**, the person before whom the confession was made, was declared hostile as he failed to corroborate the making of the confession before him and in addition to this there was no relationship between the witness and the accused. However, in the present case, it is proved that PW-114 was confident of accused and was also his friend and if it is so, the confession made to him is voluntarily made and legally admissible.

1388. No doubt, in **State of U.T Vs. Rakesh Kumar, 2002 (3), RCC, page 472**, the Hon'ble Punjab & Haryana High Court held that in case of

circumstantial evidence, extra judicial confession is weak type of confession and can not be acted upon unless corroborated, but in the present case the facts stated by the accused in his extra judicial confession before PW-114 are further corroborated from the other circumstantial evidence as discussed above.

1389. At the same time, in **Ajay Singh Vs. State of Maharashtra, 2007 (3) RCR, Criminal, page 348**, the Hon'ble Apex Court again reiterated the well settled proposition of law that an extra judicial confession, if proved to have been made voluntarily, can be relied upon to convict a accused and it is not required that the actual words stated by the accused should be repeated and if the substance of the confession has been proved, it is sufficient to link him.

1390. As far as the question of corroboration, is concerned, in **State of Karnatka Vs. MM.Ram Dass, AIR, 2002, Supreme Court, 3109**, the Hon'ble Apex Court again reiterated that the evidence in the form of extra judicial confession made by the accused to a witness can not be always termed to be a tainted evidence. Corroboration of such evidence is required only by way of abundant caution. If the court believes the witness before whom the confession is made and is satisfied that the confession has been true and voluntarily made

then conviction can be founded on such evidence alone as as unambiguous extra judicial confession possess high probative value force as it emanates from the person, who committed the crime and is admissible in evidence provided it is free from suspicion and suggestion of any falsity and free from any collateral consideration etc. Accordingly, in the present case, this fact is duly proved.

1391. In **Heramba Brahma Vs. State of Assam's case (Supra)**, the extra judicial confession was made before an under trial, without ascertaining the credentials of the witness before whom it was made and thus it was disbelieved but in the present case, it has been made to a friend in whom this accused was having full confidence and who had kept the confidence intact as PW-114 has not informed the police till the arrest of the accused.

1392. Similarly in **Sinder Pal Singh's case (Supra)**, the confession was made after 17 days of the commission of the crime and thus found to be unreliable. But in this case, the confession has been made within 2 days of the occurrence and thus this authority is of no help to the defence.

1393. The above discussed legal and factual position spells out that this circumstance of making extra judicial confession by the accused

clinches the entire issue qua him and is sufficient alone to convict him as a member of this conspiracy, as per their plan.

CIRCUMSTANCE NO 5 :

Expert evidence, as to the presence of finger prints of this accused on Car, Ex.P76.

1394. As discussed and held earlier, PW-178 after comparing the chance finger prints lifted from the car at the time of inspection, with the specimen finger prints of the accused persons, came to the conclusion that one of the chance finger prints, mark Q-4, on the rear view mirror of the car, matches with the specimen finger print of accused Lakhwinder Singh, as per the reasons mentioned in his report, Ex.PW178/5 and Ex.PW178/6.

1395. Report of this witness has been challenged by learned defence counsel, firstly, on the ground of non-taking of permission of the Magistrate and secondly the consent of the accused while taking the specimen finger prints. However, it is already held that both these grounds are not available to the accused to challenge the report of experts, as there was no such requirement of law in this regard, whereas the CBI was competent to take the handwriting and thumb impression under section 4 of the Prisoners Identification Act.

1396. At the same time, PW-115, S.S.Basoya, Junior Scientific Officer of CFSL, Chandigarh deposed that on 7.9.1995, on the asking of the CBI, he obtained the specimen finger prints of accused Lakhwinder Singh on 12 sheets, Ex.PW115/1 to Ex.PW115/12, marked SFP-14 to SFP-25 by the expert. He further deposed that later on 12.10.1995, he again went to Burail Jail and took further finger prints of accused Lakhwinder Singh on two sheets, Ex.PW115/13 and Ex.PW115/14. He further deposed that when he obtained the finger prints of Lakhwinder Singh, he was clean shaven and he can identify him, if shown clean shaven and then he identified photographs, Ex.PW111/3 and mark-00000, which were of accused Lakhwinder Singh. At the same time, no suggestion was put to him that accused Lakhwinder Singh lodged protest and refused to give specimen hand writing and finger prints or that the same were same by force or under pressure.

1397. He has also denied the suggestion that the finger prints of accused Lakhwinder Singh were also obtained on the rear view mirror forcibly and thereafter the chance print photographs were taken to link him with the case. This suggestion of learned defence counsel shows that he is not disputing the presence of finger prints of Lakhwinder Singh on the car but he tried to allege that those were taken on the rear view mirror

forcibly and then those were compared with the specimen finger prints, whereas there is no evidence on the file to believe this assertion.

1398. Now let us see whether the opinion of PW-178 is successfully challenged by the learned defence counsel. In this regard, the plea of learned defence counsel is that first of all the finger print expert is required to match the pattern of both the disputed and the admitted finger prints and if the patterns are different, it is conclusive proof that the impressions are of different persons. However, if patterns are the similar, the core and delta should be located.

1399. However, in the presence case, PW-178, during his cross examination failed to substantiate his report, EX.PW178/5 and admitted that the specimen finger prints of accused Lakhwinder Singh are different from the questioned finger prints Q-4 as to its character as well as formation of pattern. To substantiate this, he alleged that it is admitted case of PW-178 that the questioned finger, print Q-4 on the annexure, Ex.PW178/7, which is the photograph of chance finger print, is of double loop composite pattern. Whereas the specimen finger prints of Lakhwinder Singh is of different kind.

1400. However, after considering the

contention of learned defence counsel and after scrutinizing the reports and the photographs of both the disputed and the specific thumb impression, mark Q-4 and LTS-24, along with the literature on this aspect from the book authored by Dr.B.R.Sharma, a known finger print expert, Punjab, it comes out that as found by PW-178, both the finger prints Q-4 and LTS-24 are of double loop composite pattern and then there are identical ridge characteristics between both the finger prints and all the nine similarities found by PW-178, as mentioned in the report, Ex.PW178/6 are available and justified from the comparison of Q-4, chance finger print, with LTS-24, a specimen finger print of accused Lakhwinder Singh.

1401. At the same time, it is also proved on the file that on 26.8.1995, it was accused Lakhwinder Singh, who accompanied deceased Dilawar Singh, Gurmeet etc. to the shop of PW-51 and as such there is every possibility of presence of his finger prints on the car, specially when PW-51 has categorically stated that he knows the accused Lakhwinder Singh personally and on his asking, he took the job of repainting of the car. It is also proved that even thereafter accused Lakhwinder Singh remained associated in the conspiracy including the handling of the car, as on 31.8.1995 in the morning he and accused Gurmeet Singh joined Balwant Singh and Dilawar Singh at the house of PW-

99 and then reached the Secretariat in the Car, which further justifies his finger prints on the car. Thus, there is nothing on the file to say that the report of this witness is not admissible in evidence. On the contrary, it is well settled principle of law that science of finger print is perfect science and the report of such experts is a substantive evidence.

1402. In view of the above discussed legal and factual position, it comes out that the prosecution has successfully proved that both accused Lakhwinder Singh and Gurmeet Singh joined the conspiracy with a clear mind, fully knowing the objective of conspiracy and did different acts of omission and commission, as per the role assigned to them in the conspiracy, which was masterminded and coordinated by accused Jagtar Singh Hawara, as proved above and thus duly linked them with the conspiracy with cogent and reliable evidence.

CASE AGAINST ACCUSED NASIB SINGH.

1403. Now let us take up the case of accused Nasib Singh and to see whether the prosecution has been able to prove that he was also part and parcel of this conspiracy and as per the same, he abetted the commission of crime, by keeping the RDX in his house, fully knowing that it is going to be used for the murder of Beant Singh.

1404. In this regard, it is alleged by the prosecution that during the interrogations accused Jagtar Singh Tara, he disclosed that the RDX was brought by accused Jagtar Singh Hawara from the house of accused Nasib Singh situated in Village Jhingran Kalan and on his identification that house was found to be owned by accused Nasib Singh and accordingly he was arrested and when interrogated, he made a disclosure statement as to the concealment of the RDX in his house on the asking of accused Jagtar Singh Hawara and thereafter it was recovered from his house and found to be 13.700 kg. RDX, which he kept concealed in his house being part and parcel of this conspiracy, fully knowing that it is going to be used for the killing of Beant Singh and thus, he is also liable to be punished as a co-conspirator.

1405. On the other hand the case of defence counsel is that this accused has been falsely implicated by showing the recovery of RDX just to link him, without there being any evidence to show that he was ever associated in the conspiracy at any stage.

1406. To substantiate this, the learned defence counsel stated that there are more than sufficient reasons, which show that this accused has no concern, whatsoever with this crime. First

of all, it is undisputed case of the prosecution that in all the disclosure statements of accused Balwant Singh, Jagtar Singh Hawara and Jagtar Singh Tara and even in the confessions of accused Balwant Singh and Jagtar Singh Tara, there is no mention of the name of this accused as well as accused Navjot Singh.

1407. Secondly, the case of prosecution that the name of this accused surfaced in the disclosure statement of accused Jagtar Singh Tara, is also baseless because as is clear from Ex.PW80/1, the alleged disclosure statement of accused Jagtar Singh Tara, the name of this accused is nowhere mentioned. On the contrary, he has simply disclosed that he can identify the place and house from where accused Jagtar Singh Hawara has brought the RDX. If it is so, there is no evidence on the file to show how the name of this accused surfaced.

1408. At the same time, accused Jagtar Singh Tara has also not even disclosed that he knows the accused and the owner of house, from where the RDX was brought by Jagtar Singh Hawara. On the contrary, he alleged that after stopping the car on the outskirts of village Jhingran Kalan, Jagtar Singh Hawara went inside the Village and came back after sometime on a bicycle with two bags along with a girl. This fact further shows that the

prosecution has failed to show how the accused Nasib Singh was named with this case.

1409. He next submitted that once the prosecution came to know that accused Nasib Singh is related with this conspiracy and kept RDX in his house, there was no requirement to record his disclosure statement but in this case, the prosecution opted to record the disclosure statement of the accused, that too, without arresting him, as admitted by PW-243, A.P.Singh.

1410. At the same time, it is alleged by the prosecution that two independent witnesses Naib Singh, Ex-Sarpanch of Village Jhingran Kalan along with PW-81, Raghubir Singh, then Sarpanch were present, when the disclosure statement and recovery of the RDX was made.

1411. However, during the trial, Naib Singh has not been examined by the prosecution, whereas PW-81, Raghubir Singh has failed to corroborate this story of the prosecution. On the contrary, he deposed that accused Nasib Singh never made any disclosure statement in his presence nor any recovery was made in his presence. As such the entire story of prosecution to link this accused with the case, fall like a house of cards and goes to prove that he has been falsely implicated.

1412. Keeping in view the above discussed contentions of both the parties, let us consider whether the prosecution has successfully proved that accused Nasib Singh, being part and parcel and a co-conspirator of this conspiracy, used to keep arms and ammunition of his co-accused persons and used to provide shelter to accused Jagtar Singh Hawara. And after his arrest suffered a disclosure statement, Ex.PW81/1 and got recovered 13.700 kg of RDX, which was concealed by him in his house fully knowing that it is being used for killing of Beant Singh.

1413. To consider this aspect, first of all, let us scan the evidence of prosecution as to how the name of this accused surfaced. In this regard, after going through the evidence of prosecution, it comes out that it is undisputed case of the prosecution that after the arrest of accused Lakhwinder Singh and Gurmit Singh on 5.9.1995 and after the surface of the name of accused Dilawar Singh, Balwant Singh, Jagtar Singh Hawara and even after the arrest of accused Jagtar Singh Tara, on 13.9.1995, the name of this accused, as a co-conspirator, has not came on record in black and white till 18.9.1995.

1414. However, on 18.9.1995, when accused Jagtar Tara suffered a disclosure statement, Ex.PW80/1, though he has no where disclosed the

name of this accused, as the owner of the house from where accused Jagtar Singh Hawara has brought the RDX but he disclosed that he can locate that house. Thus, from the disclosure statement of this accused, it is proved that he was knowing about the location of the house from where the RDX was brought.

1415. At the same time, even in the confession of accused Balwant Singh, it is disclosed that when he along with remaining accused persons started for Chandigarh, on the way, accused Jagtar Singh Hawara and Jagtar Singh Tara went to a village and came back with the RDX, without naming the village or the name of the owner. Similarly, accused Jagtar Singh Tara in his confession, Ex.PW86/6, categorically confessed that on the asking of accused Jagtar Singh Tara, he turned the car towards Jhingran Kalan and on reaching there accused Jagtar Singh Hawara, went in village and brought the RDX on a bicycle with the girl, who took the bicycle back and thereafter they reached the house of Gurmeet Singh.

1416. It is already held that the confession of both these accused persons is admissible in evidence against them and thus it goes to prove that the RDX was brought from Village Jhingran Kalan. However, from these facts, one thing is clear that there was no evidence with

prosecution as to the involvement of this accused till 15-9-95, when accused Jagtar Singh Tara allegedly disclosed his name.

1417. Above all, it is concurrent stand of PW-248, S.N.Saxena, Chief Investigating Officer and PW-243, A.P.Singh, who arrested and investigated case against this accused, that during the interrogations, accused Jagtar Singh Tara disclosed that he can took the police party to that house and accordingly, when accused Jagtar Singh Hawara was taken to Village Jhingran Kalan, he himself led the police party and pointed out the house, from where accused Jagtar Singh Hawara, picked up the bag of RDX on 25.8.1995 and where some more RDX is still kept as disclosed by accused Jagtar Singh Hawara and then only he came to know about the name of this accused.

1418. In this regard, PW-243 has deposed that after he came to know that the house belongs to accused Nasib Singh and to start further proceedings, he called two independent witnesses of the village namely, PW-81, Raghubir Singh, then Sarpanch of the Village and Naib Singh, Ex-Sarpanch and thereafter he arrested accused Nasib Singh in their presence and when interrogated him, he suffered a disclosure statement, Ex.PW81/1, in which he disclosed that Jagtar Singh Hawara has handed over some RDX to him to kept concealed the

same in his house and out of that he had already taken some part on 25.8.1995 and the rest is still with him and he had kept concealed the same in the fodder room of his cow shed and he can get it recovered.

1419. As stated earlier, the defence has challenged the recording of disclosure statement of accused firstly saying that once accused Jagtar Singh Tara disclosed that some RDX is still lying in that house and then he pointed out and identified that house, there was no need to record the disclosure statement of Nasib Singh, that too, without arresting him in the case. On the contrary, the police can recover the same and secondly that the two independent witnesses before whom Jagtar Singh Tara has made the disclosure statement have not been joined in these proceedings.

1420. However, after going through the facts and circumstance of the case, it comes out that accused Jagtar Singh Tara has nowhere disclosed the name of the owner of the house from where he had brought the RDX, in his disclosure statement and if it was so, when he pointed out and identified that house, the police cannot raid the same as the disclosure made by the co-accused was not admissible against Nasib Singh and the only remedy with the police was to arrest the accused Nasib Singh and then to interrogate him to know the

real facts.

1421. Similarly, non joining of the two witnesses, who were present during the statement of Jagtar Singh Tara was immaterial for the proceedings at Village Jhingran Kalan. On the contrary, as per the requirement of the law, PW-243 had joined two independent witnesses of Village Jhingran Kalan and then arrested accused Nasib Singh and conducted further proceedings in their presence.

1422. No doubt, as argued by learned defence counsel, the disclosure statement of a witness can not be recorded unless he is in the custody of the Police but in this case, it is categorically stated by PW-243 that on reaching Village Jhingran Kalan and on the identification of the house from where the RDX was brought by Jagtar Singh Hawara by, he learnt that the said house belongs to accused Nasib Singh, who was found present and then he was arrested by him and thereafter his disclosure statement was recorded. If it is so, it is proved that till the arrest of accused Nasib Singh, the police was not knowing as to where the RDX has been concealed and in these circumstances, the only option with the Investigating Agency was to interrogate him and to know his stand.

1423. As far as the plea of learned defence counsel that PW-248, S.N.Saxena, the Chief Investigating Officer, was already knowing the name of Nasib Singh and the factum of keeping RDX by him in his house and as such there was no need to record the disclosure statement of accused Nasib Singh, is concerned, again there is no force in this plea because PW-248 has explained that the involvement of accused Nasib Singh came to the light during the interrogation of accused Jagtar Singh Tara but by saying so he was deposing as to the entire chain of circumstances to link all the accused persons and this does not mean that he was already knowing the name of Nasib Singh and therefore, directed PW-243 to arrest him.

1424. On the contrary, during his cross examination, when he was again grilled on this aspect, he further explained that he was having no information regarding Nasib Singh, till he was arrested by PW-243, A.P.Singh and he has denied a suggestion that when he handed over Jagtar Singh Tara to A.P.Singh, on 18.9.1995, he asked him(A.P.Singh) to take Jagtar Singh Tara and get the recovery made from the house of Nasib Singh. Thus, this fact further clarifies that what was stated by PW-248 in his examination in chief was keeping in view the entire evidence collected during the investigations to complete the case before the court and not as to the facts, which was

with him on 18.9.1995.

1425. As far as the authority relied upon by learned defence counsel in support of this plea entitled **Raja Kheema Vs. State of Saurashtra, AIR, 1956, Supreme Court, page, 217**, is concerned in that case some recoveries of incriminating articles were made not on the basis of disclosure statement made by the accused, who concealed the same but on the statement made by the accused before a third person by way of a extra judicial confession. And on these facts, the Hon'ble Apex Court held that once the police was already knowing the factum of place, where the articles were hidden, there is no question of showing its recovery at the instance of accused. However, in the present case as stated earlier, accused Jagtar Singh Tara has also disclosed about the place from where the RDX was brought by Jagtar Singh Hawara but he has nowhere disclosed that he also knows the place, where the remaining RDX is concealed. Thus, this authority is clearly distinguishable from the facts of the present case and is of no help to the accused.

1426. Similarly, the plea of learned defence counsel that the disclosure statement made by accused Nasib Singh is hit by the provisions of Section 25 and 26 of the Evidence Act, being a confession is also without any basis because as discussed earlier, if any statement made to the

Police leads to the discovery of some fact relating to the case, it is admissible under the provision of Section 27 of the Evidence Act.

1427. As such, the grounds put forward by learned defence counsel in this regard are without any basis and have no affect on the dispute of arrest of accused Nasib Singh and making of disclosure statement by him.

1428. As such, let us consider whether disclosure statement of accused Nasib Singh Ex.PW81/1, is legally and voluntarily made and leads to recovery of the RDX and thus, is not barred under the provisions of Section 27 of the Evidence Act.

1429. As stated earlier, in this regard, the prosecution alleged that accused Nasib Singh suffered the disclosure statement, Ex.PW81/1 in the presence of PW-81, Raghubir Singh then Sarpanch of Village Jhingran Kalan and one Naib Singh, Ex-Sarpanch of Village Jhingran Kalan, who both were the two respectables and independent witnesses from the same village.

1430. However, now let us see whether PW-81, who is the only witness examined by the prosecution to prove its case against Nasib Singh, supported the case or not because as argued by

learned defence counsel, this witness when appeared in the witness box denied the making of any disclosure statement or recovery of RDX from the house of accused Nasib Singh in his presence. And why the other witness Naib Singh was not examined and what is its effect on these proceedings.

1431. Accordingly, after scrutinizing the testimony of PW-81, Raghubir Singh, along with the facts and circumstance of the case, it comes out that, as argued by learned Public Prosecutor, this witness has been won over by the accused persons and he tried to side with them but when he was cross examined as to his part, he could not withstand the cross examination of Public Prosecutor and ultimately admitted the role played by him in the investigations relating to accused Nasib Singh, leading to recovery of RDX from his possession.

1432. In his examination-in-chief, this witness alleged that on 18.9.1995, he was called by a Police Officer to the house of Nasib Singh and when he reached there, he found that the police party was already present there with a bag containing RDX and it was the Police, who disclosed that it had been recovered from the house of accused Nasib Singh. However, as per this witness, the same was not recovered in his presence nor any disclosure statement was made by accused Nasib Singh in his presence.

1433. Obviously, when he alleged so, he was allowed to be cross examined by the learned Public Prosecutor being siding with the accused and during his cross examination, the truth comes out and leads to prove that he was very much present during the making of the disclosure statement by accused Nasib Singh and the recovery of RDX and there is nothing on the file to disbelieve these proceedings.

1434. Before discussing the cross examination of PW-81, it will not be out of place to mention over here that this witness is a retired police officer and he being a police officer, was knowing about all the rules and regulations as well as the working of the police department and if it is so on this ground alone, his stand that he signed the disclosure statement, Ex.PW81/1 and recovery memo, Ex.PW81/2, on the asking of the police, without there being any actual proceedings in his presence, is liable to be rejected and it further shows that he has been pressurised to say so.

1435. At the same time, once he admits his signatures on the disclosure statement, Ex.PW81/1 as well as on the recovery memo, Ex.PW81/2, it was for him to explain, why and how he signed it without knowing the actual proceedings. But he

failed to give any plausible explanation in this regard. On the contrary, he has admitted certain facts, which go to prove that he was very much present during the proceedings and denied the same only under the pressure of accused persons, for the obvious reasons.

1436. First of all, while admitting the signatures on both the above documents, he admits that the RDX, Ex.P-99, was weighed and sealed in his presence and in the presence of accused Naib Singh and it was found to be 13.700 kg, when weighed and it was put into the same bag, Ex.P98, in which it was recovered and then it was sealed with a seal impression, as mentioned on it. He further admits that the bag was sealed at the spot in his presence and a specimen seal impression was also affixed on the memo of recovery, Ex.PW81/2, in his presence and after use the seal was handed over to him.

1437. He also admits that a paper slip containing the full particulars of the case was pasted on the mouth of the bag and over it and then sealed in his presence and that paper slip was also signed by him and he identified the same as, Ex.PW81/3 and further admits that the same was also signed by the other witness Naib Singh and the Investigating Officer and then he also identified the quantity of the RDX, Ex.P99, to be the same,

which was recovered from the possession of the accused.

1438. Similarly, he also admits that the memo, Ex.PW81/2 was prepared after completing the weighment and sealing etc. He also admits that he signed the disclosure statement and the recovery memo, being Sarpanch of village, voluntarily without any coercion or force but he tried to say that he did so on the verbal representation of the Police as to its correctness. However, this explanation is neither tenable nor plausible. He, being a retired police officer, was fully aware that what is going on and why he has been called there and if no proceedings were taken in his presence, there was no question of signing these documents by him, specially when he admits that there was no coercion force etc on him, when he signed those documents.

1439. If it is so, how this witness can say that he was not present during the actual proceedings. On the contrary, the only inference, which can be drawn from the above discussed facts, which remained unrebutted, is that he has deposed otherwise just to toe with the lines of accused persons for so many reasons.

1440. There are certain more admissions on the part of this witness, which further proves his

presence, during all the proceedings. He has given the full description of the house of accused Nasib Singh and presence of police party. At one stage, he admits that when he had gone to the house of accused Nasib Singh and when the proceedings of recovery were conducted, he had not seen any other accused there. The question, which was put to this witness by the prosecution, for the above answer, was that accused Jagtar Singh Tara was also with the police party during the search and seizure proceedings but while answering the question, he forgot that this question was put only to confuse him and despite the fact that he was a Police Officer, he could not resist and admit the proceedings.

1441. As far as the denial of presence of accused Jagtar Singh Tara, during these proceedings is concerned, it is immaterial because his role was only to identify and locate the house of accused Nasib Singh. Then he (PW-81) also admits that police party remained at the house of accused Nasib Singh upto 6.45 p.m and he earlier admits that he reached there at 5.30 p.m and if as per this witness, the RDX etc. was already recovered and the disclosure of accused Nasib Singh was already recorded, for what purpose the police party remained in the house of accused Nasib Singh, for more than one hour thereafter, is another fact, which has not been explained by this witness and

which further shows that the proceedings of seizure were conducted in his presence.

1442. Although, he denied the making of statement u/s 161 Cr.P.C, Mark-PBBBBB. But when the contents of this statement was read over to him, he alleged that he does not know how it was so recorded. Then he again admitted one more fact that after sealing the bag of RDX etc. seal was handed over to him. He also admits that being a Police Officer, he had investigated so many criminal cases, in which he recorded the disclosure statement of so many accused persons and made recoveries and recorded their statements u/s 161 Cr.P.C and as such he is fully conversant with the procedure of the Police and if it is so, the only consideration, for denying the proceedings in this court, on the part of this witness, is that he is being forced to toe to the lines of accused persons.

1443. One more fact, which shows that this witness was very much present during the proceedings, is that he admits that after signing the disclosure statement, Ex.PW81/1 and recovery memo, Ex.PW81/2, fully knowing that those are not based on actual proceedings, he never made any complaint to any higher authorities for manipulating the proceedings and for falsely implicating accused Nasib Singh, despite the fact

that he was the Sarpanch of the village, which further shows that he denied the entire case may be because of the fact that accused Nasib Singh is his co-villager.

1444. Not even this, when he was cross examined by learned defence counsels, he tried to wriggle out from the facts, which he had already admitted in the cross examination by the prosecution, by saying that he do not know Hindi but again this endeavour of this witness is also to please his co-villager. Thus, the above discussed facts clearly shows that the statement of PW-81 can not be equated with a statement of a witness, who was completely hostile. On the contrary, he has admitted the material facts, which goes to prove the factum of making of disclosure statement by accused Nasib Singh and the recovery of RDX from his house, in the presence of PW-81, Ragubir Singh.

1445. Incidentally, by now it is settled proposition of law that in the event of a portion of evidence not being consistent with the statements given u/s 161 Cr.P.C and the witness stands declared hostile, that does not, however, mean and imply total rejection of evidence. The portion, which stands in favour of the prosecution can be accepted subject to a close scrutiny of the over all statement. In this regard, we can refer to the observation made by the Apex Court in **State of**

U.P. Vs. Ramesh Parsad, AIR, 1996, Supreme Court, 2766, as well as Gurpreet Singh Vs. State of Haryana, AIR, 2002, Supreme Court, page 3217.

1446. Similarly in **Bhagwan Singh Vs. State of Haryana, AIR, 1976, Supreme Court, page 202**, the Hon'ble Apex Court reiterated the above settled principle of law and held that mere fact that a witness is declared hostile by the party calling him and allowed to be cross examined does not make him a unreliable witness so as to exclude his evidence from the consideration altogether. The evidence, which comes in favour of prosecution is admissible in trial and there is no legal bar to base a conviction upon such a testimony if corroborated by other reliable evidence.

1447. Last but not the least, the factum of recovery of RDX, from the house of accused Nasib Singh, is otherwise established on record, in view of the testimony of PW-243, A.P.Singh, Investigating Officer, who supported the case of prosecution from the stage of arrest of accused Nasib Singh, making of disclosure statement Ex.PW81/1, recovery of the 13.700 kg of RDX, Ex.P99, in the bag Ex.P98, sealing of the same as per the procedure of law and taking of the same into possession in the presence of two witnesses as per memo of recovery, Ex.PW81/2.

1448. The plea of learned defence counsel that the other witness of these proceeding, Naib Singh is not examined, is also baseless because PW-81 himself admitted that Naib Singh had died during the pendency of trial and if it is so, the prosecution was at loss for non-examination of this said witness, who may have supported the case in toto.

1449. At the same time question arises whether joining of independent witness is a mandatory provision in such like cases and whether the recovery conducted by investigating officer, without joining any independent witness or if joined but failed to support the case, is doubtful and what is the affect of provisions of section 100(4) and (5) of Code of Criminal Procedure on such proceedings.

1450. This question was directly considered by the Hon'ble Apex Court, in **State, Govt of NCT of Delhi Vs. Sunil, 2001, Supreme Court Cases (Criminal) 248,** and the Hon'ble Apex Court held that:-

"There is no requirement either under Section 27 of the Evidence Act or under Section 161 of the Code of Criminal Procedure, to obtain signature of independent witnesses on the record in which statement of an accused is written. The legal obligation to call independent

and respectable inhabitants of the locality to attend and witness the exercise made by the Police is cast on the police officer when searches are made under Chapter VII of the Code. Section 100(5) of the Code requires that such search shall be made in their presence and a list of all things seized in the course of such search and of the places in which they are respectively found, shall be prepared by such officer or other person "and signed by such witnesses". It must be remembered that a search is made to find out a thing or document about which the searching officer has no prior idea as to where the thing or document is kept. He prowls for it either on reasonable suspicion or on some guesswork that it could possibly be ferreted out in such prowling. It is a stark reality that during searches the team which conducts the search would have to meddle with lots of other articles and documents also and in such process many such articles or documents are likely to be displaced or even strewn helter-skelter. The legislative idea in insisting on such searches to be made in the presence of two independent inhabitants of the locality is to ensure the safety of all such articles meddled with and to protect the rights of the persons entitled thereto. But recovery of an object pursuant to the information supplied by an accused in custody is different from the searching endeavour envisaged in Chapter VII of the Code."

1451. Before that, the Hon'ble Apex Court, while indicating the difference between the two processes i.e the search and seizures, in **Transport Commissioner A.P Vs. S.Sardar Ali, AIR, 1983**

SC,1225, laid down the following proposition:-

"Section 100 of the Criminal Procedure Code to which reference was made by the counsel deals with searches and not seizures. In the very nature of things when property is seized and not recovered during a search, it is not possible to comply with the provisions of sub-sections (4) and (5) of Section 100 of the Criminal Procedure Code."

1452. Relying upon the above propositions, the Hon'ble Apex Court in **State Vs. Sunil's case (Supra)**, concluded that:-

"Hence it is a fallacious impression that when recovery is effected pursuant to any statement made by the accused the document prepared by the Investigating Officer contemporaneous with such recovery must necessarily be attested by the independent witnesses. Of course, if any such statement leads to recovery of any article it is open to the investigating officer to take the signature of any person present at that time, on the document prepared for such recovery. But if no witness was present or if no person had agreed to affix his signature on the document⁵, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the recovery evidence unreliable. The court has to consider the evidence of the investigating officer who deposed to the fact of recovery based on the statement elicited from the accused on its own worth."

It was further held that:-

"We feel that it is an archaic notion that actions of the police officer should be approached with initial distrust. We are aware that such a notion was lavishly entertained during the British period and policemen also knew about it. Its hangover persisted during post-independent years but it is time now to start placing at least initial trust on the actions and the documents made by the police. At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognized even by the legislature. Hence when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the accused, through cross-examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a particular case. If the court has any good reason to suspect the truthfulness of such records of the police the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions."

1453. Another related question with this aspect, is whether the evidence relating to the recovery is acceptable, when non-official witnesses did not support the recovery and made departure from the statement made during the investigations. This question was consider by the Hon'ble Apex Court in **Modan Singh Vs. State of Rajasthan, 1978 (4) SCC 435** and the Hon'ble Apex Court held that:-

"Where the evidence of the Investigating Officer who recovered the material objects is convincing, the evidence as to recovery need not be rejected on the ground that seizure witnesses did not support th8e prosecution version.

1454. Similarly in **Mohd Aslam Vs. State of Maharashtra 2001(9)SCC, page 362**, the Hon'ble Apex Court held that:-

"If panch witnesses turn hostile, which happens very often in criminal cases, the evidence of the person who effected the recovery would not stand vitiated."

1455. Lastly in **Antar Singh Vs. State of Rajasthan AIR 2004 Supreme Court 2865**, the Hon'ble Apex Court again reiterated the above mentioned proposition of law.

1456. In view of the above discussed legal

position, it comes out that even if we ignore the testimony of PW-81, the factum of recovery of RDX from the house of accused Nasib Singh, in consequences to his disclosure statement, is duly proved, specially when recovery involved is 13.700 kg of RDX, which is a high explosive and not available easily and thus can be planted on the accused. Above all there is no explanation on the file as to why the prosecution has arrested him and involved him in this case falsely. No motive or animosity on the party of the CBI for this has been shown. Then, the efforts of PW-81, Raghubir Singh to create doubts regarding the recovery proceedings of RDX, also proved in vain and goes to show that the recovery proceedings were true and lastly the fact confessed by accused Balwant Singh and Jagtar Singh Tara corroborate and fortify the same.

1457. One more plea put forward by learned defence counsel is that no site plan of the place of recovery i.e the house of accused Nasib Singh, has been prepared by, PW-243 and there is no explanation in this regard. On the contrary, this fact coupled with the cross examination of PW-243, shows that he never visited the house of accused nor recovered any RDX and all the proceedings are manipulated.

1458. However, after considering the case of the prosecution in this regard, it comes out

that admittedly, the Investigating Officer of these proceedings, PW-243, A.P.Singh, has not prepared the site plan of the place of recovery of RDX, from the house of accused Nasib Singh but as stated earlier, it perse has no affect on the factum of recovery of RDX.

1459. At the same time, it is already held that even before denying the factum of recovery from the house of Nasib Singh, PW-81, Raghubir Singh admitted that a CBI party headed by PW-243 raided the house of accused Nasib Singh and remained there for about one and half hour and completed all the proceedings of recovery at the spot. If it is so, no further evidence is required to believe the presence of PW-243 and the recovery proceedings, specially, when the defence alleged that PW-81, is their witness, as he has not supported the factum of recovery in his examination-in-chief, whereas it was not so, as the testimony of PW-81, clearly proves the factum of recovery of RDX, from the house of Nasib Singh. As such, this plea also proved in vain to raise any doubts about the recovery proceedings.

1460. Similarly, one more plea of learned defence counsel was that the daughter of Nasib Singh namely Harpreet Kaur, who was admittedly present during these proceedings has not been cited as a witness, despite the fact that her statement

u/s 161 Cr.P.C, was recorded by the Investigating Officer. However, again there is no force in this plea also because admittedly, Harpreet Kaur daughter of accused Nasib Singh, was present in the house, when the search and seizure proceedings were done and her statement in this regard was also recorded but she was not an attesting witness of the recovery proceedings nor she can be, as it can not be believed that she will support the factum of recovery of RDX from her house and from the custody of her father during the trial and under these circumstances, she was dropped from the list of witnesses being won over. Even otherwise, the factum of recovery of RDX is already proved with cogent evidence and no further evidence is required in this regard.

1461. As far as the authority relied upon by learned defence counsel entitled **Balak Ram Vs. State of U.P, AIR, 1974, Supreme Court, page 2165**, is concerned, in that case a conviction recorded by the lower court, on the basis of dying declaration recorded by the Investigating Officer, was held to be not a reliable and substantive evidence and on those facts, it was held that the sole statement of Investigating Officer is not sufficient to convict the accused. However, in the present case, the factum of recovery of RDX from the house of the accused Nasib Singh is clearly proved from the testimony of PW-243, Investigating Officer of the

case as well as from the testimony of PW-81, coupled with the other facts and circumstances in the form of confessions of some of the accused persons. Thus, this authority is of no help to the defence specially in view of the legal position discussed above.

1462. In view of the above discussed, legal and factual position, it is held that the prosecution has successfully proved that as per the disclosure statement made by accused Nasib Singh, Ex.PW81/1, 13.700 kg of a substance looking as RDX, Ex.P99, was recovered from the house of accused Nasib Singh as per the requirement of the law. As such, let us examine whether the prosecution has been able to prove that the substance recovered from the possession of accused Nasib Singh and stated to be RDX, was properly sealed, kept and reached the CFSL intact and thus, was rightly found to be RDX by PW-165, as it so disputed by learned defence counsels.

1463. Now, let us consider the authenticity of the recovery proceedings and the custody of the RDX till its examination by PW-165, coupled with the dispute of seals affixed on the parcel prepared at the spot. In this regard, from the testimony of PW-243, it is proved that as per his disclosure statement, accused Nasib Singh himself pulled out one bag from cattle fodder of his cattle shed and

when the same was opened, it was found containing explosive substance.

1464. The same was accordingly weighed and found to be 13.700 kg and same was put into same bag and was sealed with the seal impression, sample of which has been also affixed on the memo of recovery, Ex.PW81/2 and the seal after use was handed over to PW-81, Raghubir Singh, as admitted by him, after completing the proceedings. As mentioned earlier, PW-81 has admitted that the explosive substance was weighed and found to be 13.700 kg and then it was sealed with the seal mentioned on the recovery memo, Ex.PW-81/2 and was taken into possession, as per that memo. Thus, the factum of proper sealing of the RDX after its recovery and weighment, is duly established on record.

1465. It is further stated by PW-243 that after completing the proceedings of recovery etc. including the recording of statement of both the private witnesses including the statement of PW-81, Ex.PW243/1, without any addition or omission, he returned back to Chandigarh and handed over all the proceedings including the parcel of the RDX, which was exhibited in the court as Ex.P98 including the RDX, Ex.P99 to Shri S.N.Saxena, Chief Investigating Officer and also handed over accused to him.

1466. In view of the above stand of PW-243, which remained conclusive, it is proved that after completing the recovery proceedings on 18.9.1995, he returned back to Chandigarh and handed over the parcel of the RDX to PW-248. Accordingly, PW-248, Sh.S.N.Saxena, when stepped into the witness box reiterated this fact and admitted that on 18.9.1995 itself, the parcel of RDX along with the accused and proceedings was handed over to him by PW-243 and he deposited the parcel of the RDX in the malkhana of CBI, Chandigarh.

1467. He further deposed that on 20.9.1995, he left Chandigarh for Delhi along with accused Jagtar Singh Tara and all the incriminating articles, which were seized on 2.9.1995 and 3.9.1995 along with the parcel of the RDX and on reaching there, he forwarded the same to CFSL on 21.9.1995 for examination and reports. He and PW-243 categorically deposed that till the time the case property remained with them, it remained intact and neither they interfered with the same nor they allowed anybody to do so.

1468. Similarly, PW-165, Roop Singh, a Ballistics Expert and who has examined the parcel of RDX, also deposed that on 21.9.1995 he received the parcel, Ex.P98, sealed with 14 seals containing, 13.700 kg of black coloured pasty material looking like RDX along with a specimen

seal impression. Accordingly, he compared the seal on the parcel with the specimen seal impression and found the same to be similar and then opened the parcel and took out a sample of 10 gms out of the same and then tested it in the laboratory and after chemical and instrumental analysis, he found the said substance to be RDX as the test confirms the presence of RDX based high explosive in the contents of the substance, as per his report, Ex.PW165/2.

1469. From the above discussed evidence, it is proved that from 18.9.1995 till 21.9.1995, when the RDX reaches CFSL, the parcel of the same remained intact. No doubt, as submitted by learned defence counsel the prosecution has not examined any witness of malkhana of the CBI, Chandigarh to prove about the depositing of this parcel in that malkhana on 18.9.1995 and its custody till 20.9.1995, but this has no bearing on the intactness of the case property.

1470. At the same time, the defence has examined DW-9, Parlad Singh, SI Incharge of Malkhana of the CBI at Chandigarh, who deposed that as per the practice, if the case property of any other branch of the CBI, is temporarily kept in the malkhana, it is kept without making any entry in the malkhana register, if it is not related with their branch and he further admitted that the some

case property relating to the present case was also deposited in the malkhana.

1471. If it is so, this fact further proves that as stated by PW-248 after receiving the parcel of the RDX, Ex.P98, he kept the same in the CBI malkhana at Chandigarh temporarily, for two days and then took it to Delhi and on 21.9.1995, the same was deposited in the CFSL. At the same time, PW-165 has further stated that when he received the parcel, he compared the seals on the parcel with specimen seal impressions, which he received separately and found that they tallied with each other. If it is so, now let us consider the dispute of seal impression.

1472. Again after considering the evidence and surrounding facts and circumstance under which recovery was made and the pace of investigations coupled with stakes involved on this aspect, it comes out that the learned defence counsel has picked up a typographical mistake made during the recording of statement of PW-165 and tried to dispute the intactness of the parcel in which the RDX recovered from the house of Nasib Singh was sealed, saying that seal disclosed by PW-165 is different from the impression affixed on the parcel of RDX, Ex.P98 and as mentioned on the recovery memo, Ex.PW81/2.

1473. However, even this fact proved in vain because no doubt, PW-165 deposed that on 21.9.1995 after receiving the gunny bag sealed with the seal of **CBI SIC-II**, he also received a specimen seal impression and compared the seals affixed on parcel Ex.P98 with the same and found both the impressions similar but while typing the impression of seal, it was typed as **CBI SIC-II** and this may be only because of typographical mistake, because in the report, Ex.PW165/2, it is categorically mentioned that the parcel containing gunny bag of RDX was sealed with the 14 seals of an impression of Capital alphabets of NK or KN, inscribed on a seal and the said seal impressions on the parcel, Ex.P98, were intact and tallied with the specimen seal received separately which was similar to the impression affixed on the recovery memo, Ex.PW81/2.

1474. Another reason for this confusion is that, it is also proved that after taking a sample of 10 gms. from the parcel of the RDX, Ex.PW-98, PW-165 re-sealed the parcel of RDX with his seals of CFSL and the same was returned back to the CBI and it was brought back by PW-241, Surinder Pal Singh, as states by him and later on when it was produced in the court during the trial, obviously it was having the seals of CFSL, which may also lead to confusion to PW-165 to say that it was bearing the seals of CFSL.

1475. In view of the above discussed facts, it is proved that the parcel was actually sealed with the same seal, impression of which is mentioned on the recovery memo, Ex.PW81/2 and this fact is further proved on the file from the specimen seal impression affixed on the recovery memo Ex.PW81/2, which also contains the same seal impressions, which was found by PW-165, before opening the same for analysis.

1476. At the same time, PW-165 was not cross examined by the learned defence counsel to further clarify this aspect and it further shows that the impression of the seal used and mentioned in the testimony of PW-165 was wrongly typed as CBI SIC-II, which otherwise cannot be a seal impression and which was only the branch Code of the CBI, Delhi. Thus, no benefit of this mistake cannot be given to the prosecution.

1477. Not even this, the defence itself examined, DW-19, Hira Singh, Inspector, Incharge of the malkhana of the CBI/SCR-II-New Delhi, Branch at the relevant time and who has brought the malkhana register and deposed that on 21.9.1995 as per entry no.927 of 1995 one sealed packet containing 13.700 kg of RDX was deposited in the malkhana, as per the receipt, copy of which is Ex.PX/1, which is the copy of recovery memo, Ex.PW81/2 and at that time, it was sealed with the seal impression of the

CFSL. This testimony of DW-19 was further clarified by learned defence counsel by cross examining him, when he clarified that although he received the sample on 21.9.1995 but the entry of the same was made at serial no.927/95 on 22.9.1995.

1478. Whatever may be the facts and circumstances, this evidence clearly clinches that on 21.9.1995 the parcel of the RDX was sent to CFSL, where a sample of 10 gm was separated by PW-165 and thereafter the remaining parcel was sealed with the seals of CFSL as mentioned above and was returned back to the CBI and was deposited in the CBI malkhana at Delhi. Thus, this evidence proves that the parcel containing the RDX recovered from the possession of accused Nasib Singh, Ex.P98 remained intact with the same seals, with which it was sealed on 18.9.1995 till 21.9.1995, when it was opened by PW-165 and when a sample of 10 gms was separated. Thus, the entire controversy raised by the learned defence counsel in this regard is without any basis and was only to confuse the matter.

1479. At the same time, this parcel was produced in the court for the first time during the testimony of PW-81, Raghubir Singh and at that time, it was found sealed with the seals of CFSL as mentioned above and as was deposited with DW-19. This fact further proves about the intactness of

the RDX till its examination and if it is so, no link evidence is missing in this regard as is alleged by learned defence counsel, as explained above. If it is so, the authority relied upon by learned defence counsel on this aspect are of no help.

1480. Not even this, in **State of Rajasthan Vs. Daulat Ram, AIR 1960, Supreme Court, page 1314**, the Hon'ble Apex Court held that where the sample of opium changed several hands before reaching the analyst and yet none of those in whose custody it remains, were examined to prove that while in their custody the seals on the sample were not tampered with, it shows that material link is missing and benefit of the same be given to the accused. Similar principle was reiterated in **Om Parkash Vs. State of Haryana, 1999(1), RCR, Criminal, 771 and Darshan Singh Vs. State of Punjab, 1995(3), RCR, page 365 and Balwant Singh Vs. state of Punjab, 1997(4), RCR, Criminal, page 824**, by the Hon'ble Punjab & Haryana High Court.

1481. However, all the above cases were under the provisions of NDPS Act, wherein the report of the Experts as to the nature of contraband, is the material aspect and as such, if any doubt has been found qua the custody and intactness of the same, it is considered as very serious. However, the facts of the present case are

clearly distinguishable as it is already discussed and held that all the witnesses in whose custody the parcel of the RDX remained from 18.9.1995 till 21.9.1995 as appeared in the witness box and deposed as to the intactness of the seals and the contents of the parcel.

1482. Similarly in **Smt. Meena Gopalkrishnan Vs. State of Maharashtra, 1993. Cr1.L.J. 3634**, it was settled that where the Chemical examiner has deposed that he has compared the seals with the specimen seal impressions and found the same intact, no benefit of non-examining of police constable, who took the sample to the Chemical analyser can be given as the possibility of tempering with the samples during the transit, stands excluded altogether in view of the statement of the Chemical examiner.

1483. In view of the above discussion, there is nothing on the file to doubt about the authenticity of the case of the prosecution as far as the factum of recovery of 13.700 kg of RDX, Ex.P99, from the accused Nasib Singh, its custody and intactness till it reaches the CFSL, is concerned.

1484. Now the question comes whether the recovery of RDX from the house of accused Nasib Singh is sufficient to say that he kept the same in

his house in furtherance of his conspiracy with the remaining accused persons and thus is sufficient to link him with the conspiracy, specially when it is admitted case of the prosecution that apart from this circumstance, there is no other evidence on the file to link accused Nasib Singh with the conspiracy of crime.

1485. As per the legal position discussed above on the point as to what evidence is required to prove a conspiracy and specially as concluded by the Hon'ble Supreme Court in **State Vs. Nalini's case (supra)** known as **Rajiv Gandhi murder trial**, that it was the duty of the prosecution to prove by positive evidence that there was a positive agreement in the minds of two or more persons and there was a meeting of minds to do an unlawful act or a lawful act with unlawful means, because the most important ingredient of the offence of conspiracy is the agreement between two or more persons and not merely an intention to do such acts. And if such a design rests in intention only, it cannot be a circumstance to infer conspiracy.

1486. Accordingly in the present case it was the duty of the prosecution to prove that accused Nasib Singh entered into this conspiracy by way of positive agreement in his mind to help, aid or abet his co-accused persons in killing S.Beant Singh.

1487. However, applying the above discussed proposition of law to the facts in hand, it comes out that the prosecution has miserably failed to prove this fact on record and it comes out that accused Nasib Singh, though guilty of keeping RDX in his house, but there is no link of chain either through circumstances or through any other evidence, to say that he did so being part and parcel of this conspiracy or knowing that the RDX kept in his house is going to be used for commission of any crime and specially the killing of S.Beant Singh.

1488. As mentioned earlier, it is undisputed case of the prosecution that the recovery of the RDX from the house of accused Nasib Singh, is the only material circumstance to link him with the conspiracy and apart from this, there is no other evidence in this regard. However, it is already held that the recovery of RDX is not a ground to say so. At the same time, when accused Nasib Singh was interrogated and he suffered a disclosure statement Ex.PW81/1, which is supported by recovery of RDX, he has nowhere disclosed that he was part and parcel of this conspiracy and was knowing that the the RDX, which accused Jagtar Singh Hawara has kept in his house, will be used for commission of this crime.

1489. In addition to this, even in the most material evidence of the prosecution i.e the confessions made by the accused Jagtar Singh Tara and Balwant Singh, who both accompanied accused Jagtar Singh Hawara to the house of Nasib Singh, has nowhere stated anything in this regard. Even in the extra judicial confession suffered by accused Balwant Singh and Jagtar Singh Tara, there is no mention of the name of this accused or as to any role played by him in this conspiracy including the factum of keeping the RDX.

1490. Apart from this, none of the 248 witnesses of the prosecution including all the Investigating Officers and specially PW-243, who recovered the RDX and PW-248, S.N.Saxena, Chief Investigating Officer, who has challaned accused Nasib Singh, could clarify or depose any circumstance, what to talk of an incriminating circumstance, to show that this accused was knowing the conspiracy from its beginning or at any later stage and joined the same with an intention and motive similar to the remaining accused persons and the factum of keeping of RDX was also a step in the execution of the conspiracy.

1491. In view of the above discussed legal and factual position, it is held that the prosecution has miserably failed to link accused Nasib Singh with this conspiracy, although it is

proved that 13.700 kgs. RDX was recovered from this house which he kept unlawfully but it is insufficient to link him with this conspiracy, specially when there is no other evidence on the file in this regard. Thus, as far as accused Nasib Singh is concerned, although he can be held guilty for commission of offence punishable under section 5 of the Explosives Substance Act, 1908 but he deserves acquittal from the charges of conspiracy to kill S.Beant Singh, under the theory of benefit of doubt.

CASE AGAINST ACCUSED NAVJOT SINGH.

1492. As far as accused Navjot Singh is concerned, it is alleged by the prosecution that accused Jagtar Singh Tara in his disclosure statement stated that after bringing the RDX and all other inputs of the bomb as well as arms and ammunitions and before the final action, they decided to conceal the extra RDX and other arms & ammunitions and for that purpose they kept the entire stock in a bag and decided to conceal this in the house of accused Navjot Singh and Jagrup Singh, who were residing in Mohali, as they were already associated in this conspiracy through Paramjit Singh, when they met in the house of absconding accused Jagroop Singh at Mohali. Accordingly accused Navjot Singh, took the said arms and ammunitions to his house and kept and

concealed the same in his bed room.

1493. It is further alleged by the prosecution that thereafter accused Navjot Singh was arrested by PW-244, R.S.Dhankar, one of the Investigating Officers of this case, on 17.9.1995, and the house of accused Navjot Singh was searched to recover the arms and ammunitions. However, no arms and ammunition or any other incriminating article relating to this assassination or conspiracy were recovered from his house. On the contrary, some documents and papers, along with some literature and a diary Ex.PW244/3, containing the writing, Ex.PW91/23 to Ex.PW91/30, were recovered and those were found containing the writings, which show that he was part and parcel of this conspiracy and later on the said writings of accused Navjot Singh was compared with his specimen hand writing and was found to be in his hands by PW-91 and PW-92, co-employees of Navjot Singh.

1494. And the document experts also found the same to be in the hands of Navjot Singh, which clearly shows that he was part and parcel of this conspiracy and lastly it is alleged by the prosecution that PW-109, Inderjit Singh, PW-184, Amarjit Kaur, PW-117 Gian Singh husband of PW-184 and PW-192, Jagjit Singh alleged that accused Navjot Singh was the member of Anand Kirtani Jatha and he along with accused Paramjit Singh and

Jagroop Singh once disclosed that they are going to kill Beant Singh.

1495. On the contrary, the defence of accused Navjot Singh is that he has been falsely implicated in this case, as his parents were having some enmity with his neighbours, who managed to falsely implicate him in this case. Accordingly, learned counsel for accused Navjot Singh submitted that the prosecution has failed to bring even an iota of evidence on the file to link this accused with this case. The entire evidence of the prosecution to show the association of this accused with Paramjit Singh and Jagroop Singh and then meeting accused Jagtar Singh Hawara, to become a member of the conspiracy remained unsubstantiated in the file.

1496. Similarly, the story of prosecution that the documents recovered from the house of accused was containing some writings and literatures, showing that accused Navjot Singh was having a plan to kill Beant Singh for the atrocities committed by him on the people of Punjab, also remained unproved on the file, firstly on the ground that the recovery of these documents itself is doubtful and secondly neither the testimony of prosecution witnesses nor the expert evidence could establish that these hand writings were in the hands of Navjot Singh and lastly if at

all those were in the hands of Navjot Singh, the same is not sufficient to link him with the conspiracy, as per the requirements of the law.

1497. Learned defence counsel in order to challenge the trial of Navjot Singh further submitted that the entire proceedings of search and seizure are highly doubtful for violation of various provisions of law and for non-joining of independent witnesses and thus leads nowhere to link this accused with the case and the only inference which can be drawn is that he has been falsely implicated.

1498. After due consideration of rival contentions of both the parties, it comes out that it is admitted case of the prosecution that the name of this accused surfaced only during the interrogation of accused Jagtar Singh Tara, who alleged that this accused was also associated in the conspiracy through accused Paramjit Singh and the extra arms and ammunitions were kept and concealed by him in his house.

1499. In this regard, it is admitted case of PW-244, R.S.Dhankar, Investigating Officer, who has arrested this case and who linked him with this conspiracy that when he arrested accused Navjot Singh, apart from the disclosures made by accused Jagtar Singh Tara during his interrogations, there

was no legal evidence with him against accused Navjot Singh.

1500. Not even this, it is also admitted case of prosecution that confession of accused Jagtar Singh Tara imputing accused Navjot Singh was recorded only 22.9.1995 but before that accused Navjot Singh was already arrested on 17.9.1995 and the search of his house was also made but neither any arms or ammunitions nor any article relating to this assassination was recovered.

1501. Not even this, even in the disclosure statement made by accused Jagtar Singh Tara on 18.9.1995, he has not named accused Navjot Singh, as per the story allegedly disclosed by him to the Investigating Officer on 13.9.1995. Not even this, when PW-244 was confronted on this aspect, he even admitted that when he went to the house of Navjot Singh to arrest him, the name of this accused was not even disclosed by any witness even in statement u/s 161 Cr.P.C. In this regard, one more fact is that even the statement of PW-109, PW-117, PW-184 and PW-192 linking the accused with this conspiracy were recorded after the arrest of this accused.

1502. All these facts & circumstances show that there was not even an iota of evidence on the file with the CBI, when it arrested accused Navjot Singh through PW-244. If it so a heavy onus lies

upon the prosecution to prove how it found that this accused was already associated in this conspiracy and how it justified his role and link with this conspiracy.

1503. Let us take the case of the prosecution point wise as alleged against this accused and to scan it with the legal position to know whether the story put forward by the prosecution qua this accused is proved and sufficient to link this accused with the conspiracy.

CIRCUMSTANCE NO.1 :

Association of accused Navjot Singh in conspiracy.

1504. It is alleged by the prosecution that some time in the month of July, 1995, accused Paramjit Singh, who is being tried separately along with accused Navjot Singh, Jagtar Singh Hawara met Jagroop Singh at his house in Mohali, as accused Paramjit, Navjot Singh and Jagroop Singh, were the members of the Akhand Kirtani Jatha and accused Paramjit disclosed that Beant Singh, then CM Punjab and KPS Gill, DGP, Punjab were to be killed as they are responsible for killing of several Jathedars in false encounters and accused Jagtar Singh Hawara assured the availability of arms & ammunitions and accused Paramjit Singh, Jagroop Singh and Navjot

Singh joined the conspiracy and agreed to help them to achieve the goal.

1505. As per the legal position discussed above as to the point of evidence required to prove a conspiracy and specially as concluded by the Hon'ble Supreme Court in **State Vs. Nalini's case (supra)** known as **Rajiv Gandhi murder trial**, that it was the duty of the prosecution to prove by positive evidence that there was a positive agreement in the minds of two or more persons and there was a meeting of minds to do an unlawful act or a lawful act with unlawful means, because the most important ingredient of the offence of conspiracy is the agreement between two or more persons and not merely an intention to do such acts. And if such a design rests in intention only, it cannot be a circumstance to infer conspiracy.

1506. However, after going through the evidence brought on the file by the prosecution, it comes out that there is not even an iota of evidence on the file to prove the association of accused Navjot Singh with any of the accused persons of this case in any manner and his link with conspiracy as per the requirements of the law mentioned above.

1507. In this regard, it is alleged by the prosecution that after the arrest of accused

Navjot Singh, when the facts were further verified, Pws 109, 117, 184 and 192 also disclosed that they had seen accused Navjot Singh while discussing this conspiracy with his co-accused Paramjit Singh and Jagroop Singh. However, all these witnesses have not supported the case of the prosecution, despite the fact that their testimony after the arrest of the accused was otherwise inadmissible qua Navjot Singh.

1508. The most material witness of the prosecution on this aspect is PW-109 Inderjit Singh, who was known to accused Paramjit Singh and before whom accused Paramjit Singh, Navjot Singh and Jagroop Singh disclosed in the month of July, 1995 that they are going to kill Beant Singh. However, during the trial this witness has not deposed anything as per the above facts. On the contrary, he disclosed that he was knowing one Paramjit Singh, who took him to Delhi to provide him employment. Although, he admitted that he also knows the house of sister of Paramjit Singh at Mohali but he denied that he met accused Navjot Singh, Jagtar Singh Hawara and Paramjit Singh in the house of Jagroop Singh, where they disclosed about the killing of Beant Singh. No doubt, this witness was declared hostile to the prosecution and was allowed to cross examine by the learned Public Prosecutor but despite detailed cross examination of this witness, he denied making of statement to

CBI on 30.9.1995, Ex.PW109/2 as to the association of accused Navjot Singh and Paramjit Singh in this conspiracy.

1509. Not even this, it further comes out that when the contents of statement, Ex.PW109/2 were read over to this witness, he denied making of any such statement. Although, he admitted that he was knowing Jagroop Singh resident of Mohali but he denied his association with accused Navjot Singh. On the contrary, he alleged that he was illegally detained by the Punjab Police and he was allowed to go only when he promised to become a witness in this case. Needless to say as discussed earlier, even a hostile testimony of witness can be relied upon to the extent it support the case of the prosecution but in this case, the statement of PW-109 leads nowhere and as such can not be relied for any purpose whatsoever.

1510. Another witness relied upon by the prosecution on this aspect was PW-184, Amarjit Kaur, landlord of absconding accused Jagroop Singh and the case of the prosecution is that accused Navjot Singh used to visit the house of Jagroop Singh and she used to help him as her brother was ASI in the Punjab Police and Jagroop Singh disclosed her about the assassination of Beant Singh and their involvement.

1511. However, this witness when stepped into the witness box failed to prove this aspect. She stated that although, she knows Jagroop Singh, who was residing in her house as tenant but she failed to identify accused Navjot Singh in the court or to say that he used to visit Jagroop Singh on a Moped and he also used to talk to her for help to settle the dispute of his father with their neighbourer through her brother, who was ASI in the Punjab Police. No doubt, as stated earlier, this witness was also declared hostile and was allowed to be cross examined by learned Public Prosecutor but despite incisive cross examination by learned Public Prosecutor, nothing material comes out to show any link of Navjot Singh with this conspiracy

1512. To the same effect is the testimony of PW-117, Gian Singh, husband of PW-184 and he also stated that absconding accused Jagroop Singh was tenant in his house up to September, 1995 but he never saw PW-109, Inderjit Singh along with accused Navjot Singh, who was friend of Jagroop Singh, in his house nor he ever talk to Navjot Singh in connection with helping his father for some dispute with his neighbours. No doubt, this witness was also declared hostile and was allowed to be cross examined by the learned Public Prosecutor but despite incisive cross examination by the learned Public Prosecutor, nothing material comes out to show any link of Navjot Singh with

this conspiracy. Thus, this witness also failed to prove the association of accused Navjot Singh with the remaining accused persons.

1513. Similarly, it is also alleged that PW-192 Jagdish Singh, who is the brother-in-law of accused Paramjit Singh, who is being tried separately, also saw Navjot Singh with Paramjit Singh and Jagroop Singh together and discussing the conspiracy. However, this witness has also not supported this story when he stepped into the witness box. On the contrary, he stated that accused Paramjit Singh is his brother-in-law and he used to work in some factory at Delhi.

1514. He further stated that although he resided at Mohali in a rented accommodation till December or January, 1996 and Paramjit Singh used to visit and stay with him but accused Navjot Singh never came to meet Paramjit Singh, when he was staying in that house. If it is so, the testimony of this witness also proved in vain to prove the association of accused Navjot Singh with the remaining accused persons and about joining of this conspiracy. Even, this witness was also cross examined by the learned Public Prosecutor after being declared as hostile but still his stand remains as it is and he denied the association of accused Navjot Singh with his brother in law, accused Paramjit Singh in any manner.

1515. At the same time, the prosecution has failed to brought any other evidence on the file to prove this story. On the contrary, it is admitted case of PW-244, R.S.Dhankar that this story came to their knowledge only after the arrest of accused Navjot Singh and at the time of his arrest he was not having any legal evidence against this accused. If it is so, no reliance can be placed on this evidence.

1516. In view of the above discussed factual evidence, it is proved that there is not even an iota of evidence on the file to say that accused Navjot Singh was already associated with accused Paramjit Singh and Jagroop Singh and then he met accused Jagtar Singh Hawara and joined the conspiracy and then he helped his co-conspirators by concealing the arms and ammunitions in his house

CIRCUMSTANCE NO.2 :

Arrest and search of house of accused Navjot Singh and recovery of the alleged incriminating documents, Ex.PW91/23 to Ex.PW91/30 and its evidentiary value and its relevancy to link this accused with conspiracy specially when no arms and ammunitions etc. were recovered.

1517. As stated earlier, the only material circumstance relied upon by the prosecution against accused Navjot Singh, to link him with this

conspiracy, was that it was disclosed by accused Jagtar Singh Tara that out of the arms and ammunitions brought by accused Jagtar Singh Hawara to Chandigarh, the extra part of that arms & ammunitions was kept concealed in the bed room of accused Navjot Singh, who was part and parcel of this conspiracy. However, as stated earlier, even this aspect of this case is not substantiated with any cogent and plausible evidence.

1518. For the sake of repetition, it will not be out of place to mention that PW-244, R.S.Dhankar has also admitted that apart from the information supplied by accused Jagtar Singh Tara, he was having no legal evidence on the file against accused Navjot Singh, when he raided the house of accused Navjot Singh and arrested him. Even the stand of PW-244, R.S.Dhankar about oral information is self contradictory and highly doubtful because it is admitted case of PW-244 that accused Jagtar Singh Tara disclosed these facts on 15.9.1995 including the involvement of Navjot Singh and he also disclosed that the remaining part of the arms and ammunitions has been kept concealed in the house of Navjot Singh despite the fact that accused Jagtar Singh Tara was arrested on 13-09-95. And even if it was so, PW-244 was required to raid the house of accused Navjot Singh immediately on 15.9.1995 itself but no raid was conducted on that day or immediate thereafter.

1519. Not even this, he further admitted that accused Jagtar Singh Tara has also identified and located the house of accused Navjot Singh on 16.9.1995 but despite this no search was conducted in the house of accused Navjot Singh on that day and there is explanation on the file as to why the accused Navjot Singh was not arrested immediately despite the fact that there was a serious allegation against him as to possessing a huge quantity of arms and explosives and despite the fact that PW-244 was satisfied regarding the availability of explosive substance in the house of Navjot Singh. Thus, this aspect further shows that accused Navjot Singh has been involved only on the basis of unverified information and without any home work, for the reasons best known to the CBI.

1520. Not even this, even when the house of the accused Navjot Singh was raided on 17.9.1995 and he was apprehended, PW-244 has neither interrogated him nor recorded any disclosure statement or confession of this accused despite the fact that PW-244 alleged that when he arrested accused Navjot Singh, he admitted that some part of the explosive substance has been brought from the house of Jagroop Singh and was kept in his house. Not even this, it is further admitted by PW-244 that accused Navjot Singh was not arrested prior to the disclosing of above facts. If it is so, that

information was neither admissible as a confession under the provisions of Section 27 of the Indian Evidence Act nor was sufficient to search the house without ascertaining the veracity of the same. Not even this, he further admitted that after the arrest of accused Navjot Singh, he asked him to produce the explosive substance but nothing was produced.

1521. No doubt, the learned defence counsel has challenged the factum of search of the house of accused Navjot Singh on various grounds including the non-compliance of the mandatory provisions of Cr.P.C, however, even if we ignore those grounds and believe that a raid was conducted, the question comes what was the outcome of that raid and how the recovery made on the basis of the raid has any relevancy with this case.

1522. Above all, when PW-244 conducted the search of the house of accused Navjot Singh, no explosive substance or even any type of illegal arm or any other incriminating article was recovered from the search to link this accused with this conspiracy, despite the fact that there was a genuine information with the PW-244 in this regard. If it is so, this fact alone shows that the entire story put forward by the prosecution to arrest accused Navjot Singh and to search his house is without any basis and lacks legal force. Not even

this, there is no explanation on the file as to why the prosecution has not verified as to how and under what circumstances, the arms and ammunitions, if kept, in the house of accused Navjot Singh, were removed and who removed it.

1523. On the other hand, it is alleged by the prosecution that during the search proceedings, the prosecution recovered certain documents on loose papers and a diary of accused Navjot Singh Ex.PW244/3, which was containing incriminating writings as to the assassination of Beant Singh, Ex.PW91/23 to Ex.PW91/25 and even on the loose sheets running into four pages Ex.PW91/26 to Ex.PW91/30, it was mentioned that late Beant Singh should be killed for his illegal acts of omissions and commissions qua the Sikh community.

1524. However, the question comes, even if it is presumed that these writings were recovered from the house of accused Navjot Singh, whether those were sufficient to link him with this conspiracy for which the prosecution was required to brought positive and convincing evidence of his agreement with the remaining accused persons. However, after going through these writings and the evidence related to it, it comes out that the prosecution has failed to prove that these writings are sufficient to link him with this conspiracy.

1525. Before taking the evidentiary value of this recovery, let us consider certain objections of learned defence counsel as to the search and seizure proceedings, conducted vide memo, Ex.PW244/2. Admittedly, as argued by learned defence counsel, no independent witness whatsoever was joined by PW-244, despite the fact that he was having an advance information for this raid, as it is admitted case of PW-244 that on 15.9.1995 itself he came to know that accused Navjot Singh has kept explosive substances in his house for which raid is required to be conducted.

1526. Similarly, it is also admitted by PW-244 that he was not the Investigating Officer of this case and as such he was required to take the written authority from PW-248, S.N.Saxena, who was the Chief Investigating Officer of this case, by way of a search warrant as per the requirements of section 165 of Code of Criminal Procedure. However, in this case, no such written authorization was taken from PW-248 but it was alleged that PW-248 authorized PW-244 to conduct the search and seizure. However, this explanation also lacks credibility because as stated earlier, PW-244 was having two days at his disposal to obtain written authorization from PW-248 as required u/s 165 of the Cr.P.C. but he failed to get the same.

1527. On the contrary, when PW-248 was

confronted on this aspect, he admitted that he had not given any such warrant or authorization letter to PW-244 to conduct the raid. On the contrary, PW-244 himself was knowing about the evidence against Navjot Singh and arrested him. Not even this, PW-248 further admits that he was very much present at Chandigarh at that time. If it is so, why he has not himself conducted this raid and search is a fact, which has also not been explained by him.

1528. Not even this, PW-244, also admits that even the local police was not informed or involved to raid the house of accused Navjot Singh as required, although, the Chandigarh Police was taken by him. However, as mentioned earlier even if ignore all the lacunas, which are material violations, still the recovery leads no where and lacks the credibility of incriminating evidence, sufficient to link the accused Navjot Singh and to convict him. Now let us see how this recovery is relevant and inadmissible in evidence.

1529. To prove that the incriminating hand writings, Ex.PW91/23 to Ex.PW91/25 on the diary, Ex.PW244/3 and the writings on four loose sheets, Ex.PW91/26 to Ex.PW91/30 are in the hands of accused Navjot Singh, the prosecution relied upon the testimony of PW-91, Ram Singh, PW-92 Gurpreet Singh and PW-93 Major S.S.Bedi, who were also working with accused Navjot Singh, in the Ranbaxy,

Lab Limited, Mohali, where accused Navjot Singh was working in the store department and PW-91 to PW-93 are the supervisory officers. However, to the surprise of the prosecution, all these three witnesses have failed to toe to the lines of the prosecution by saying that the disputed writings mentioned above are in the hands of accused Navjot Singh.

1530. Although, all these three witnesses have identified the hand writing of accused Navjot Singh on the admitted and specimen hand writings and signatures of accused Navjot Singh, Ex.PW91/1 to Ex.PW91/22, which are the documents taken from the PW-93, from Ranbaxy Lab Limited and which are in the hands of accused Navjot Singh and signed by him and some of these are the documents pertaining to preparation of passport of accused Navjot Singh. However, when they were called upon to identify the disputed writing, they stated that these are not in the hands of Navjot Singh or they refused to give any opinion.

1531. Needless to say the disputed writings were also examined by the document experts and marked as Q-8 to Q-15 on the writings, Ex.PW91/23 to Ex.PW91/30. However, once these witnesses, who were the most appropriate persons to identify the handwriting of accused Navjot Singh, failed to give any definite opinion about the authorship of the

disputed documents, the entire case of the prosecution in this regard becomes doubtful.

1532. First of all, when PW-91 Ram Singh, who was the Store Supervisor under whom accused Navjot Singh was working and who had seen him while writing and signing so many documents, was called upon to identify the writing of accused Navjot Singh on the disputed documents mark Q-8 to Q-15 in comparison with the admitted hand writing on the documents Ex.PW91/1 to Ex.PW91/22, he deposed that he is not sure whether the disputed hand writings mark Q-8 to Q-10 in the diary are in the hands of accused Navjot Singh but it appears to be similar. Similarly, he also deposed that he can not confirm whether the loose sheets mark Q-11 to Q-15 are in the hands of accused Navjot Singh or not. Thus, this witness has failed to give any definite opinion on this aspect and thus his testimony is insufficient to held so.

1533. Similarly, PW-92 Gurpreet Singh, who was also working as Store Assistant with accused Navjot Singh, when called upon to identify the hand writing of Navjot Singh on the disputed document, he deposed that he can not recognize these hand writings. Although, this witness was declared hostile to the prosecution and was allowed to be cross examined by the learned Public Prosecutor but even after the cross examination, the learned

Public Prosecution could not elicit anything favourable for the prosecution as far as the dispute as to the identity of disputed hand writing is concerned.

1534. PW-93 from whom documents Ex.PW91/1 to Ex.PW91/22 were taken into possession by the CBI being Security Adviser of Ranbaxy, is a formal witness, who has simply directed PW-93 to hand over these documents to CBI.

1535. In view of the above discussed evidence, it comes out that testimony of PW-91 and PW-92 is not conclusive proof of authorship of the disputed documents to be in the hands of accused Navjot Singh.

1536. Now let us consider the statement of PW-166, T.R.Nehra, a hand writing and document expert, who after comparing the disputed writings on documents, Ex.PW91/23 to Ex.PW91/30, marked as Q-8 to Q-15 with the admitted hand writing and signatures of accused Navjot Singh, on the documents, Ex.PW91/1 to Ex.PW91/22, marked as A-69 to A-88, vide his report, Ex.PW166/26 held that both the questioned handwriting mark Q-8 to Q-12 and Q-14 and admitted handwriting are in the hands of one and the same person, whereas the questioned writings mark Q-8/1, Q-11/1, Q-11/2, Q-14/1 to Q-4 and Q-15 is beyond comparison for want of proper

specimen handwriting and it is not possible to express any opinion qua the same. However, whatever may be the facts and circumstances even if we presume that these disputed handwritings are in the hands of accused Navjot Singh, let us consider what is written on these writings and how these are relevant for this conspiracy.

1537. After going through the contents of all these disputed hand writings marked as Q-8 to Q-15 and Ex.PW91/23 to Ex.PW91/30, it comes out that the writings, Ex.PW91/23 to Ex.PW91/25 in the diary, Ex.PW244/3 is in the form of proceedings of a meeting of Khalsa Akal Purkh ki Fauj, and some resolutions have been passed but none of these resolutions has any relation, as far as the present conspiracy is concerned, as all these resolutions are for the glory of the Sikh community and the do's and dont's, which should be carried out by the Sikh community.

1538. Similarly, the writings, Ex.PW91/26 to Ex.PW91/30 on four loose sheets is also regarding the same facts. However, one of these sheets Ex.PW91/28 says about some resolutions, one of which says that **"water will not flow in SYL canal but blood of KPS, Beant Singh and his corrupt cabinet colleagues along with their friends would flow in SYL canal and will meet with the blood of Bhajan Lal and his corrupt cabinet colleagues in**

Haryana and their blood will flow through Delhi taking corrupt PMs and his party men ----- in the Arabian sea and bay of Bengal." However, now let us see whether this writing has any link with this conspiracy even if it is presumed that it is in the hands of accused Navjot Singh. Needless to say, this writing has been alleged to be the only incriminating circumstance to link Navjot Singh with this conspiracy.

1539. Accordingly, when the contents and the intent of this writing was considered with legal principles required to prove a conspiracy, we see nothing in it except mention of few feelings. Even The said feeling is not of accused Navjot Singh alone, but it is shown to be the feeling of the total Sikh community represented by 101 Khalsa soldiers, who took part in some meeting and even if we assume that this writing is in the hands of Navjot Singh, it does not mean that it was having any link with this conspiracy.

1540. Simply because of the fact that in the writing it is mentioned that the blood of Beant Singh will flow in SYL Canal, it does not mean that it was referred to this conspiracy or plan, specially when no date or year has been mentioned on these writings, even to say that it was prior to or after the killing of Beant Singh. However, since

the diary, Ex.PW244/3 is of the year 1992, it can be presumed that it was some where in 1992 and one more clue about this is that this writing is on the pages dated 1,June, 1992 to 11,June, 1992 and we can apply a wild guess to say that this must be at least of the year 1992 and thus, can not be linked with this conspiracy, which took place in the year 1995.

1541. At the same time, a perusal of the whole writings shows that there is no reference at all as to the plan or conspiracy to kill Beant Singh. Nowhere it mentions about the arms and ammunitions with which they are planning to eliminate Beant Singh. There is also no reference about Navjot Singh conspiring with other accused persons or vice versa. Under these circumstance, it is clear that except the mentioning of words, 'flow of blood of Beant Singh in SYL canal' there is nothing in this document, which is of any significance and if the document is read as a whole, we see nothing incriminating against this accused. However, unfortunately, the CBI considered this document as a substantial proof to link this accused with this case.

1542. Last but not the least, even if we presumed that by way of this writing, accused Navjot Singh felt like killing the persons mentioned in the writing, it is not sufficient to

conclude that it relates to this conspiracy, which has been proved to be initiated by accused Jagtar Singh Hawara and others who are sitting in foreign countries and that too, in agreement with those accused persons or they were also present at that time. Thus no inference of any conspiracy can be drawn.

1543. A similar document recovered from one of the accused involved in the killing of late Prime Minister Smt. Indira Gandhi was pressed into service as an incriminating circumstance against that accused, in which also a similar writing as to the feelings was mentioned, but the Hon'ble Apex Court held that such type of writing cannot be equated with a substantial proof of a conspiracy as the material ingredient of conspiracy is that there must be evidence to indicate that accused was in agreement with other accused persons to do the act, which was the ultimate object and such a document was held to be a scrap paper and was excluded from consideration and it was held that it can not be made basis to convict a person. Similar principle was reiterated in **State of Tamilnadu Vs. S.Nalini's case (Supra)**, known as Rajiv Gandhi murder trial.

1544. Similarly in **Aravindan and others' case supra**, the Hon'ble Kerala High Court in a case where a speech given by a person along with slogan raised against the Government was made a basis for

a charge under Section 121-A of IPC, with conspiracy and the Hon'ble Kerala High Court while deciding the question whether those allegations amounts to an offence under section 121-A of the IPC, held that a solgan that a Government can be changed by an armed revolution does not mean that there is a conspiracy to change the Government by criminal force and simply because of the fact that some slogans have been raised for the revolution, it will not make the same as the intention to over awe the Government by means of criminal force.

1545. Similarly in **Balwant Singh's case (supra)** again under the similarly circumstances, the Hon'ble Apex Court held that the raising of slogans a couple of times by two individuals without anything more, did not constitute any threat to the Government as by law established nor could the same give rise to the feeling of enmity or hatred among different communities. Similarly in the present case, simply because of the fact that accused Navjot Singh has some writings showing some religious feelings qua the work and conduct of S.Beant Singh and to take revenge for his illegal acts, it will not be sufficient to say that he was doing so being a part and parcel of this conspiracy and being an active member of the group which meet to eliminate S.Beant Singh as per the story of the prosecution.

1546. The sequel to the above discussion is that the entire story of the prosecution to link this accused with this case on the basis of the recovery of alleged writings, is inadmissible in evidence and cannot be made basis to convict him for this serious offence.

CIRCUMSTANCE NO.3

Confession of co-accused Jagtar Singh Tara.

1547. Needless to say the other evidence pressed into service against Navjot Singh was the confession made by accused Jagtar Singh Tara but as discussed earlier, this confession can not be utilized as a direct evidence to convict the accused but it can be used to corroborate the other evidence which is otherwise sufficient to convict this accused. The most appropriate authority on this aspect is **Nathu Vs. State of U.T., AIR, 1956, Supreme Court, page 56**, where the Hon'ble Apex Court held that even under the provision of Section 30 of Indian Evidence Act, confession of co-accused are not substantive evidence as defined in Section 3 and no conviction can be founded thereon but if there was other evidence on which conviction can be based, such a confession can be referred to as corroborative circumstance to lend assurance.]

1548. This very principle was again

reiterated by the Hon'ble Apex Court in **Hari Charan Kurmi Vs. State of Bihar, AIR, 1964, Supreme Court 1184**, there again the Hon'ble Apex Court reiterated that while dealing with the case against accused person, the court can not start with a confession of a co-accused person, it must began with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt and thus confession of co-accused person is not per se a substantive evidence, which can be pressed into service to convict an accused and lastly, this principle was again reiterated in **State Vs. Navjot Sandhu's case (Supra)** and in **Alok Nath's case (Supra)** .

1549. In view of the above discussed legal position, it comes out that the confession of accused Jagtar Singh Tara can not be made basis to link this accused with this conspiracy, specially when in both the confessional statement of both the other accused Balwant Singh and Shamsher Singh, they have not named this accused being a member of this conspiracy. At the same time, as discussed earlier, there no other evidence what to talk of cogent evidence to support the facts disclosed by accused Jagtar Singh Tara against accused Navjot Singh.

1550. Similarly, DW-5, Tirlok Singh, father of this accused, when stepped into the witness box categorically and vehemently deposed that his son has been falsely implicated in this case by the Police and all his efforts and representations made to the higher authorities remained unheard and the evidence brought before this court justify the defence put forward by the father of the accused, which is further supported by DW-3, R.S.Bajwa, a neighbour of this accused.

1551. However, although accused Navjot Singh has relied upon copy of judgment, Ex.DW-4/A but the same has no relevancy for his defence, as that judgment was relating to a case registered at Delhi vide FIR no.681 of 1995 for commission of offences u/s 120-B of IPC read with Sections 121, 122, 124-A along with Section 4 & 5 of Explosive Substance Act, in which he was arrested and taken to Delhi but after that, when he was arrested in the present case and in view of the notification of the Chandigarh Administration under Section 268 (1) of the Cr.PC, he was not produced at Delhi and the case pending against him at Delhi was decided only against his co-accused, whereas the trial against him is still pending. If it is so, no benefit of this judgment can be given to this accused.

1552. No-doubt, DW-4, Mohkam Singh, who was

co-accused with this accused in the above case, deposed that during the pendency of the case at Delhi, when he met accused Navjot Singh in Tihar Jail, accused Navjot Singh disclosed him that police has implicated him in criminal case of Delhi for pressurising him to become a witness relating to the present case, despite the fact that he has no concern with the assassination of Beant Singh. He also deposed that accused Navjot Singh was at that time tortured and harassed.

1553. However whatever may be facts and circumstances, the above stand of this witness was only to show the innocence of accused Navjot Singh. However, his contention as to the false implication of accused Navjot Singh in the case pending at Delhi, is without any basis as no findings in this regard has been delivered by the competent court of jurisdiction at Delhi in favour of accused Navjot Singh as he has not been tried in the said case till today.

1554. However the statement of DW-4 can be considered as a ground to show the circumstances in which accused Navjot Singh was linked with this case and which is also substantiated from the above discussed factual and legal position and further goes to show that this accused has been arrested and challaned, despite there being no legal evidence against him to substantiate the charge of

conspiracy and in these circumstances, his plea of false implication is seems to be plausible.

1555. The sequel to the above discussion is that as far as accused Navjot Singh is concerned, the prosecution has failed to link him with this conspiracy and its execution with cogent and reliable evidence and as such, he is entitled for benefit of doubt and deserve acquittal.

1556. Before coming to the final conclusions, let us consider one more aspect of this assassination, which relates to the killing of Dilawar Singh in this blast. As discussed earlier while taking the case of assassin Dilawar Singh qua his role in the assassination, as argued by the prosecution, it was found that this accused was instigated by the remaining accused persons to act as a human bomb and to kill himself, with an object to kill S.Beant Singh and all this was done by them in prosecution of their conspiracy with an oblique motive to kill S.Beant Singh and while doing so, all those accused persons were knowing that they are also committing an offence of abetment of suicide which is punishable as an offence under Section 306 read with Section 120-B of the Indian Penal Code.

1557. No doubt, it was alleged by the defence that accused-assassin Dilwar Singh offered

himself to act as a human bomb, but this plea has not been substantiated from the evidence available on record. On the other hand, the entire set of circumstances leading to the initiation, preparation and execution of this conspiracy, show that deceased Dilawar Singh was emotionally allured and goaded to act as a human bomb, to be known as a martyr and because of this instigation, emotional pressures and abetment, he was prevailed upon to commit suicide for the killing of S.Beant Singh. As such this plea of the defence is not tenable and rejected outrightly.

1558. In view of the above discussed peculiar situation, this Court will be failing in its duties if the accused, who would be held liable for the commission of offence of assassination of S.Beant Singh along with 16 other persons, are not punished for their oblique motive of abetting the suicide by Dilawar Singh by acting as a human bomb. Thus this aspect will also be considered while convicting the accused persons for the assassination of S.Beant Singh.

1559. Empassing it would not be out of place to mention here, the prosecution has placed on the file the sanction of the Central Govt as granted by Home Secretary to the Chandigarh Administration, U.T., for the prosecution of all the accused persons for commission of offences

under the Explosive Substance Act as per the orders Ex.PW248/6, as required under Section 7 of the said Act.

FINAL ORDER

1560. As per the above discussed legal and factual position and for the detailed reasons mentioned above, while deciding the points for determination, it comes out that the prosecution has successfully proved that **accused Balwant Singh, Jagtar Singh Hawara, Gurmit Singh, Lakhwinder Singh Shamsheer Singh, deceased Dilawar Singh**, Jagtar Singh Tara, now a proclaimed offender, in this trial, being part and parcel of a well laid and executed conspiracy, involving many more persons including the accused, who are absconders and proclaimed offenders, committed various acts of omission and commissions, as discussed above and killed S.Beant Singh, then Chief Minister Punjab, along with sixteen other innocent persons and seriously injured 15 other persons, with an intention to kill them also, by exploding the belt bomb strapped on the body of deceased assassin Dilawar Singh, who on the instigation of all the accused persons, acted as a human bomb and detonates himself near the car of late S.Beant Singh, killing him and other persons and in which process, he (Dilawar hSingh), too was exterminated, in a macabre and gruesome manner.

1561. And all this was done by all the above-mentioned accused persons in prosecution of their conspiracy, which was master-minded by accused Jagtar Singh Hawara on the instigation of some more persons, who plotted and floated this conspiracy, while sitting in some foreign countries. Not even this while doing so all the above named accused persons were fully knowing that the mode chosen by them to kill late Beant Singh, to satisfy their religious objective, being a bomb consisting of RDX as main explosive and other projectiles and splinters as missiles and to make it more lethal adding a high explosive substance as detonator, will also result into brutal killing of many more innocent persons for no fault of them.

1562. It is also proved that for the commission of offence of murder of deceased S.Beant Singh, all the above named accused persons, unlawfully possessed RDX, which is high explosive substance with intend, by means thereof to endanger human life or cause serious injuries to property and they also used the said RDX for the preparation of belt bomb, used by deceased Dilawar Singh, to kill S.Beant Singh, then Chief Minister, Punjab and all of them unlawfully and maliciously caused an explosion fully knowing that it will endanger life and cause serious repercussions to the society in

general and loss of human life and injuries and loss to the property in particular.

1563. As such, let us consider, for what offences the accused persons are liable to be convicted. Needless to say, it is proved with cogent and reliable evidence beyond reasonable doubt that all the above named accused persons, being part and parcel of conspiracy hatched by accused Jagtar Singh Hawara on the asking of some other accused persons, as held above, killed S.Beant Singh and 16 other persons by way of a bomb blast caused by deceased Dilawar Singh acting as a human bomb and as such the conspiracy to commit the offence of murder in the course of execution of conspiracy, is well within the scope of conspiracy, to which all the above accused persons were party.

1564. Therefore, all the above named accused persons i.e. **Balwant Singh, Jagtar Singh Hawara, Gurmit Singh, Lakhwinder Singh, Shamsher Singh and deceased Dilawar Singh**, are liable to be punished under Section 120-B IPC read with Section 302 of the Indian Penal Code as well as under Section 120-B read with Section 307 of the Indian Penal Code, as all the accused persons, named above, took active part in the series of steps taken to pursue the objective of conspiracy i.e the killing of S.Beant Singh, then Chief Minister, Punjab. Besides this, they are also liable to be

convicted for commission of an offence under Section 3(b) read with Section 6 of the Explosive Substance Act, 1908, read with Section 120-B of the Indian Penal Code, and also for commission of an offence under Sections 4 b(ii) and 5(b) read with Section 6 of the Explosive Substance Act, 1908, as the explosive recovered from the possession of this accused is a special category explosive substance, as defined under section 2(b) of the above Act.

1565. At the same time, it is also proved on the file that all the above named accused persons instigated Dilawar Singh to act as a human bomb and abetted him to kill S.Beant Singh and 16 other persons and as such they are liable for punishment on this account also for the commission of an offence of abetment of suicide by Dilawar Singh, who though was also killed while killing S.Beant Singh and others but he was instigated to do so by the above named accused persons, which makes them liable for commission of an offence punishable under section 109 read with Section 306 read with Section 120-B of the IPC.

1566. But as far as deceased Dilawar Singh is concerned, all the charges stand abated against him due to his death in the blast.

1567. However, as far as accused Nasib Singh is concerned, the prosecution has failed to

link him with the conspiracy in hand in any manner as discussed above. But it is proved on the file that this accused kept in his possession 13.700 kg of RDX, which is high explosive substance, fully knowing its nature with intend, by means there of to endanger life or cause serious injuries to property and to use for illegal purposes, which is punishable as an offence u/s 5(b) of the Explosive Substances Act, 1908, as the explosive recovered from the possession of this accused is a special category explosive substance, as defined under section 2(b) of the above Act.

1568. But as far as accused Navjot Singh is concerned, the prosecution has miserably failed to prove him to be involved in this conspiracy either directly or indirectly, on the contrary, this accused is entitled for benefit of doubt for being not linked with the offence in question in any manner with cogent and reliable evidence beyond a shadow of reasonable doubt and as such he deserves to be acquitted under the doctrine of benefit of doubt.

1569. As a final conclusion to the above discussions, the following orders are hereby passed:-

1. As far as accused **Navjot Singh** is concerned, since the prosecution has failed to

prove his guilt, as per the requirements of the law, therefore, by giving him the benefit of doubt, he stands **acquitted** of the charges framed against him in this case. He be released forthwith if not required in any other case.

2. As far as accused **Nasib Singh** is concerned, although he is held to be not involved in the conspiracy of killing late S.Beant Singh, then Chief Minister, Punjab in any manner but as held above, he kept in his possession 13.700 kg of RDX illegally and for unlawful purposes. Thus, he is hereby held guilty and convicted for commission of an offence punishable u/s 5(b) of the Explosive Substance Act, 1908. But he stands acquitted from all other charges framed against him.

3. As far as the remaining accused persons namely **Balwant Singh, Jagtar Singh Hawara, Lakhwinder Singh, Gurmit Singh and Shamsher Singh** are concerned, all of them are hereby held guilty and convicted as under:-

(i) For commission of an offence under Section 302 read with Section 120-B of the IPC.

(ii) For commission of an offence

under Section 307 read with Section 120-B of the IPC.

(iii) For commission of an offence under section 109 read with Section 306 of the Indian Penal Code read with Section 120-B of the Indian Penal Code.

(iv) For commission of an offence under Section 3(b) read with Section 6 of the Explosive Substance Act, 1908 read with Section 120-B of the IPC.

(v) For commission of offence under Section 4 b(ii) read with Section 6 of the Explosive Substance Act, 1908 read with Section 120-B of the IPC.

(vi) For commission of offence under Section 5(b) read with Section 6 of the Explosive Substance Act, 1908 read with Section 120-B of the IPC.

1570. Needless to say anything stated in this judgment qua all those accused persons, who are not put on trial including accused Jagtar Singh

Tara is for the limited purpose of Section 299 of the Cr.P.C and it shall not be misconstrued as an opinion on the merits against those accused persons. On the other hand, all those accused persons be put on trial as and when arrested or surrendered. Similarly this judgment will also not prejudice the case of Paramjit Singh, who is being tried separately for this very offence and conspiracy in any manner.

1571. It is ordered accordingly. Let, all the accused convicted above be heard on the question of sentence as per the provisions of Section 235(2) of Cr.P.C.

Pronounced in the open court at Burail Jail, on July 27, 2007 at Chandigarh.

***(Ravi Kumar Sondhi),
Additional Sessions Judge,
Camp at Burail Jail,
Chandigarh.***

Certified that this judgment contains **976** pages and all the pages have been checked & signed by the undersigned.

***(Ravi Kumar Sondhi),
Additional Sessions Judge,
Camp at Burail Jail,
Chandigarh.***

Argued by: Sh.S.K.Saxena assisted by Sh.R.K.
Handa & Sh.Rajan Malhotra, Spl.P.P
for the CBI.

Sh.A.S.Chahal, Sh.R.C.Sharma,
Sh.S.S.Bawa and Sh.N.S.Minhas,
Advocates for convicts Gurmeet Singh
Jagtar Singh Hawara, Shamsher Singh,
Lakhwinder Singh and Nasib Singh.

Convict Balwant Singh in person.

ORDER ON SENTENCE

1572. The arguments put forward by the prosecution as well as the defence on the question of sentence have been heard.

1573. It is argued by the learned Public Prosecutor that the offence committed by the accused persons is not only against a particular personality but it is also against the humanity at large, as the accused persons have killed 17 persons and injured many more just for the sake of their religious enmity against deceased Beant Singh, fully knowing that the form of bomb chosen by them will not only kill particular person but it will also kill so many innocent persons. Even the time chosen by the accused was the time, when the offices were going to be closed and all the employees were rushing out for going to their houses.

1574. Accordingly, it was their contention that keeping in view the gravity of the offence and its repercussion on the society, peace and tranquility of the State, it is a fit case which can be termed as 'rarest of the rare case' justifying the capital sentence and it was prayed accordingly.

1575. Learned Public Prosecutor for the CBI further submitted that there are more than sufficient aggravating circumstances which justify the extreme penalty of death and he substantiated that first of all, it is a case of pre-planned conspiracy hatched and executed with lot of preparations. The target of the accused persons was a democratically elected Chief Minister of a State, who was was also the Head of the State, when he was killed. At the same time, the repercussions of crime on the society was very serious as it has tarnished the conscious of the society at large.

1576. Above all, the convicts had chosen a mode of crime, a bomb made of RDX, which is a high explosive substance, knowing that it will not only kill their target but will also results into killing of others and despite this they caused the blast with that mode killing 16 innocent persons for no fault of them besides killing S.Beant Singh and injuring 15 persons and thereby ruined their

families also.

1577. It was also submitted by the learned Public Prosecutor that the modus operandi of the convicts in using the human bomb also shows their criminality and brutality to commit the crime. The convicts have committed this crime not to take any personal revenge but it was a pre-planned and religiously motivated crime under illogical belief.

1578. Not even this, during the pendency of the trial, accused Jagtar Singh Hawara and Jagtar Singh Tara escaped from the Jail after digging out a tunnel and till today accused Jagtar Singh Tara has not been arrested and this fact further shows the criminal nature of the accused persons and their commitment to the crime. Even accused Balwant Singh while admitting the commission of the crime, when called upon to give his version on sentence, he alleged that he does not want to say anything and he has no remorse for his act, which is also another aggravating circumstance. Accordingly he submitted that only the death penalty will be the appropriate sentence and thus warranted.

1579. On the other hand, the case of the defence is that all the accused persons convicted for the offence in question, were those who have been induced by the others to join the conspiracy and this fact alone is a mitigating circumstance,

which justifies leniency qua the convicts. They further submitted that simply because of the fact that high profile person was the victim of the crime, it can not be said that it is a case of rarest of the rare spice. Therefore, it is a fit case, where they deserve this leniency specially when they have already suffered a lot by this protracted trial for a span of about 12 years and their families have also been disturbed and the facts and circumstances and the prevailing situation at that time was so volatile that it prevailed upon and instigated them to take this step and it shows that they were having no personal motive behind this crime.

1580. Not even this, it was further submitted by the learned defence counsel that there are some more mitigating circumstances, which this Court is required to take into consideration while sentencing the convicts. To substantiate this, he submitted that the offence in question cannot be treated as a brutal act but it was only an emotional act, as mentioned above and thus it itself is a mitigating circumstance. At the same time, all these convicts were very young and innocent persons when they committed this crime and even now they are in their prime age, which should also be considered to impose lesser punishment keeping in view the modern theory of reformation and rehabilitation, specially when there is nothing

on the file to prove this fact otherwise.

1581. He further submitted that at the same time, this case is based on circumstantial evidence and as such as per the law laid down by the Hon'ble Apex Court in **Sahdeo Vs. State of U.P. 2004 (10) SCC 682** and **Alok Nath Dutta Vs. State of West Bengal 2007 (1) RCR (Cr1) 468**, it itself is a ground for not imposing the extreme penalty as there is a possibility of break in the chain of circumstances.

1582. The learned defence counsel further submitted that as far as accused Lakhwinder Singh, Gurmeet Singh and Shamsheer Singh are concerned, they are not previous convicts or having any history of criminal acts. Their act and conduct during the trial was also found to be good and as such on this ground also, they crave for lenient sentence. Even there is no evidence on the file to say that accused convicts Jagtar Singh Hawara and Balwant Singh are hardened criminals or terrorists. On the contrary, convict Balwant Singh was fair and honest enough in admitting this crime, which also shows his act and conduct.

1583. Lastly, another strange argument put-forward by the learned counsel for the convicts was that as deposed by DW-17 Paramjit Kaur, deceased Beant Singh was guilty of commission of various

atrocities on the Sikh Community and as such the convicts were having no option but to kill him and even in the history of Sikhs, Beant Singh is known as Butcher and this fact be also considered while inflicting sentence on the convicts. Not even this, some of the accused convicts have also placed on the file a written arguments signed by them along with two books i.e. "Genesis of Terrorism in Punjab" in English and "Mukti De Parwane - Shama Jagdi Rakho" justifying this killing as per their religious thoughts and theory. With these averments, they prayed for the sentence of life imprisonment saying that there is no exceptional circumstance to make it a rarest of rare case.

1584. Then taking the case of convict Nasib Singh, it was submitted that he is an old man of 63 years of age and already remained in jail for about 12 years and keeping in view the fact that he has no link with this conspiracy and there is no evidence that he kept the RDX intentionally with illegal purpose and as such he should be released as he has already undergone sufficient imprisonment by taking a lenient view in his favour. Whereas the learned Public Prosecutor submitted that the explosive recovered from the possession of accused Nasib Singh is a special category explosive substance which is punishable under clause 5 (b) of the Explosive Substances Act and as such keeping in view this special reason, he is not entitled for

any leniency and as such he should also be punished deterrently.

1585. Both the parties have relied upon various authorities to support their contentions.

1586. After due consideration of the contentions of both the parties and after considering the facts and circumstances of the case, and the case law relied upon, it comes out that as far as the consideration on the quantum of sentence in a case of conviction for an offence punishable with death or in alternative with imprisonment for life or imprisonment for term of years, is concerned, the court has to state the reasons for the sentence awarded and in case of sentence of death, the special reasons for such cases.

1587. Needless to say, before the amendment of the Cr.P.C in the year 1973, the earlier provision obliged the court to pass the death sentence as a general proposition and the alternative sentence could be awarded only in the exceptional cases for which court was then required to give special reasons. However, after 1973, there was a complete reversal to this provision as Section 354(3) of the Cr.P.C, now provides that life imprisonment will be the rule as the quantum of sentence of the murder and the death penalty was

allowed to be passed only in exceptional cases and that too, by mentioning special reasons for choosing the later.

1588. Is this case is an instance of rarest of the rare case, meriting imposition of capital punishment is now the question for consideration?

1589. As far as, the parameters to decide this controversy are concerned, in **Bachan Singh Vs. State of Punjab case (Supra)**, a Constitution Bench of Hon'ble Apex Court, dealt with the validity of death sentence and while doing so, the rule of rarest of rare cases was laid down.

1590. During pre-Bachan Singh period the Sessions Court was free to choose death penalty in any case where special reasons could be advanced. But during post-Bachan Singh period even that was drastically changed as the Hon'ble Constitution Bench made it impermissible to award death sentence except in rarest of the rare cases wherein the lesser alternative is unquestionably foreclosed.

1591. As the law which has been pronounced in such unreserved language on the subject, holds the field over thereafter we are required to remind ourselves of the legal position adumbrated by the Constitution Bench in **Bachan Singh's case (Supra)**. The following is the ratio laid down by the Hon'ble

Apex court, which emerged after making a detailed analysis of various view points on the sustainability of the provision empowering the Court to pass death sentence.

1592. It is therefore imperative to voice the concern that Courts, aided by the broad illustrative guidelines indicated by the Hon'ble Apex Court, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354(3). This was what was held by the Hon'ble Apex Court in **Bachan Singh's case (Supra)**, where the Hon'ble Apex Court further observed that:

"for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed."

The Hon'ble Supreme Court further laid down that:-

"As we read Sections 354(3) and 235(2) and other related provisions of the Code of 1973, it is quite clear to us that for making the choice of punishment or for ascertaining the existence or absence

of 'special reasons' in that context, the Court must pay due regard both to the crime and the criminal. What is the relative weight to be given to the aggravating and mitigating factors, depends on the facts and circumstances of the particular case."

The Hon'ble Apex Court concluded that:-

"We will do no more than to say that these are undoubtedly relevant circumstances and must be given great weight in the determination of sentence."

1593. Three such circumstances which the court was told about are the following:

(1) The age of the accused- if the accused is young or old the sentence of death should be avoided.

(2) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.

(3) That the accused acted under duress or domination of another person.

1594. In addition to this, the Hon'ble Apex Court also endorsed the classification of some of the mitigating and aggravating circumstances as propounded by Dr.Chitale which are as follow:

Aggravating circumstances:

1595. A Court may, however, in the following cases impose the penalty of death in its discretion:

(a) If the murder has been committed after previous planning and involves extreme brutality; or

(b) if the murder involves exceptional depravity; or

(c) if the murder is of a member of any of the armed forces of the Union or of a member of any police force or of any public servant and was committed -

(i) while such member or public servant was on duty; or

(ii) in consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member or public servant whether at the time of murder he was such member or public servant, as the case may be, or had ceased to be such member or public servant; or

(d) if the murder is of a person who had acted in the lawful discharge of his duty under Section 43 of the Code of Criminal Procedure, 1973 or who had rendered assistance to a Magistrate or a police officer demanding his aid or requiring his assistance under Section 37 and Section 129 of the said Code."

Mitigating Circumstances:

1596. In the exercise of its discretion in the above cases, the Court shall take into account the following circumstances:

(1) That the offence was committed under the influence of extreme mental or emotional disturbance.

(2) The age of the accused, if the accused is young or old, he shall not be sentenced to death.

(3) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.

(4) The probability that the accused can be reformed and rehabilitated. The State shall by evidence prove that the accused does not satisfy the conditions 3 and 4 above.

(5) That in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.

(6) That the accused acted under the duress or domination of another person.

(7) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct."

1597. Similarly the above proposition was

further carried by the Hon'ble Apex Court in **Machhi Singh Vs. State of Punjab's case (supra)** where the Hon'ble Apex Court settled the following propositions of law and facts to decide the controversy in question:

(i) The extreme penalty of death neednot be inflicted except in gravest cases of extreme culpability;

(ii) Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the 'crime'.

(iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

(iv) A balance-sheet of aggravating and mitigating circumstances has to be drawn up and in doing so, the mitigating circumstances has to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

1598. The illustrative circumstances which

were laid down in the aforementioned cases and were reiterated in **Machhi Singh Vs. State of Punjab's case (supra)** are:

1. When the murder is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community.

2. When the murder is committed for a motive which evinces total depravity and meanness; e.g. murder by hired assassin for money or reward; or cold-blooded murder for gains of a person vis-a-vis whom the murderer is in a dominating position or in a position of trust; or murder is committed in course of betrayal of the motherland.

3. When murder of a member of a Scheduled Caste or minority community etc. is committed not for personal reasons but in circumstances which arouse social wrath; or in case of "bride-burning" or "dowry deaths" or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

4. When the crime is enormous in proportion. For instance when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

5. When the victim of murder is an innocent child, or a helpless woman or old or infirm person or a person vis-a-

vis whom the murderer is in a dominating position, or a public figure generally loved and respected by the community.

1599. Similarly, in **Surendra Pal Shivbalakpal Vs. State of Gujarat 2005 (3) SCC 127**, death sentence was not imposed in a case where the offence involved was rape with murder of a girl, stating:

"13. The next question that arises for consideration is whether this is a "rarest of rare case" we do not think that this is a "rarest of rare case" in which death penalty should be imposed on the appellant. The appellant was aged 36 years at the time of the occurrence and there is no evidence that the appellant had been involved in any other criminal cases previously and appellant was a migrant labourer from U.P. and was living in impecunious circumstances and it cannot be said that he would be a menace to society in future and no materials are placed before us to draw such a conclusion. We do not think that the death penalty was warranted in this case. We confirm conviction of the appellant on all the counts but the sentence of death penalty imposed on him for the offence under Section 302 IPC is commuted to life imprisonment."

1600. Then again in **Rama Subramanian Vs. State of Kerala AIR 2006 SC 639**, this Court did not award a death penalty where a lady, together with

her three children, was killed, despite arriving at a finding that the evidence adduced by the prosecution is very clear and convincing to prove the guilt of the appellant, stating:

".....It is true that the crime committed by the appellant is cruel and dastardly in nature and the appellant deserves no mercy. However, it may be noted that it is not known how and under what circumstances the incident had taken place on 9.8.1999, the appellant was annoyed by the fact that his services were terminated without being paid any compensation despite serving his employer for quite a long period. Taking the overall facts into consideration, we do not find that this is one of the rarest of the rare cases where death sentence could be the only punishment....."

1601. As far as circumstances justifying Death penalty is concerned in ***State of Rajasthan Vs. Kheraj Ram, 2003 (8) SCC 224***, the Hon'ble Apex Court while awarding death punishment, held:

"35. A convict hovers between life and death when the question of gravity of the offence and award of adequate sentence comes up for consideration. Mankind has shifted from the state of nature towards a civilized society and it is no longer the physical opinion of the majority that takes away the liberty of a citizen by convicting him and making him suffer a sentence of imprisonment. Award of punishment

following conviction at a trial in a system wedded to the rule of law is the outcome of cool deliberation in the courtroom after adequate hearing is afforded to the parties, accusations are brought against the accused, the prosecution is given an opportunity of meeting accusations by establishing his innocence. It is the outcome of cool deliberation and the screening of the material by the informed man i.e. the Judge that leads to determination of the life.

36. The principle of proportion between crime and punishment is a principle of just deserts that serves as the foundation of every criminal sentence that is justifiable. As a principle of criminal justice it is hardly less familiar or less important than the principle that only the guilty ought to be punished. Indeed, the requirement that punishment need not be disproportionately great, which is a corollary of just deserts, is dictated by the same principle that does not allow punishment of the innocent for any punishment in excess of what is deserved for the criminal conduct is punishment without guilt.

37. The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence of each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that

punishment ought always to fit the crime; yet in practice sentences are determined large by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation, and sometimes even the terrific results of his crime. Inevitable, these considerations, caused a departure from just deserts as the basis of punishment and create cases of apparent injustice that are serious and widespread."

1602. Recently in **State through NCT Delhi Vs. Navjot Sandhu @ Afsan Guru, 2005 Criminal Law Journal, page 3950**, nine persons including eight security personnel and one gardener succumbed to the bullets of the terrorists and 16 persons including 13 security men received injuries as a result of storming of the Parliament by 5 terrorists. The Hon'ble Apex Court upholding the decision of the High Court to award death penalty, observed:

"The very idea of attacking and overpowering a sovereign democratic institution by using powerful arms and explosives and imperiling the safety of a multitude of peoples' representatives, constitutional functionaries and officials of Government of India and engaging into a combat with security forces is a terrorist act of gravest severity. It is a classic example of rarest of rare case."

1603. Again in **Holiram Bordoloi Vs. State of Assam, 2005 (3) SCC 793**, 18 persons were convicted for murdering 4 persons by burning them alive in a hut. Death penalty was imposed on one of them. The Hon'ble Apex Court, embarked on a discussion as to the aggravating circumstances and mitigating circumstances, observing:

"Pre-planned, calculated, cold-blooded murder has always been regarded as one of an aggravated kind." A "murder is diabolically conceived and cruelty executed", it would justify the imposition of the death penalty on the murderer.... In many cases, the extremely cruel or beastly manner of the commission of murder is itself a demonstrated index of the depraved character of the perpetrator. This is why it is not desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate watertight compartments."

The Hon'ble Apex Court also affirming the death penalty, held:

"Even when questioned under Section 235(2) of Criminal Procedure Code, the accused stated that he had nothing to say on the point of sentence. The fact that the appellant remained silent would show that he has no repentance for the ghastly act he committed."

1604. One more precedent in this regard is the principles laid down by the Hon'ble Apex Court

in **Pratap Singh Vs. State of Jharkhand and another, 2005 (3) SCC 557**, where a Trade Union leader was shot dead by the convict, as a result of a labour dispute. The Hon'ble Apex Court while taking into consideration the plea of delay and the pendency of the appeals since 1991 held that simply because of the fact that there was long lapse of time, it cannot be said that the death sentence is not justified.

1605. Lastly in **Alok Nath Gupta & others Vs. State of West Bengal, 2007(1), RCC, page 586**, the Hon'ble Apex Court after considering the entire case law on the matter in issue held that death penalty can be awarded if in the opinion of court, the case answers the description of rarest of rare case. What would constitute a rarest of rare case must be determined in the facts situation obtaining in each case and a balance sheet of aggravating and mitigating circumstances has to be drawn and considered as the judicial precedent by itself may not be a ground to laid down any uniform criteria for awarding death penalty or a lesser sentence.

1606. Similarly on the same topic i.e. on the methodology of death sentence, the Hon'ble Apex Court in **Subhash Ramkumar Vs. State of Maharashtra (JT) 2002 (9) SC 445** and while balancing the discretionary power and disproportionate and inadequacy of sentence, the Hon'ble Apex Court held

that:

"Ours being a civilised society - a tooth for a tooth and an eye for an eye ought not to be the criterion and as such the question of there being acting under any haste in regard to the capital punishment would not arise: Rather our jurisprudence speaks of the factum of the law courts being slow in that direction and it is in that perspective a reasonable proportion has to be maintained between the heinousness of the crime and the punishment. While it is true punishment disproportionately severe ought not to be passed but that does not even clothe the law courts, however, with an option to award the sentence which would be manifestly inadequate having due regard to the nature of offence since an inadequate sentence would not subserve the cause of justice to the society.

1607. One more related question, which this court is confronted with is, that what should be the quantum of sentence in a criminal case which is based on a criminal conspiracy involving so many accused persons and their different roles at different stages but to achieve the same objective. However this question is also no more res integra and the Hon'ble Apex Court after considering a situation, in **State of Tamil Nadu Vs. Nalini's case (supra)** and settled that in a case involving conspiracy by different persons at different stages, such conspirators can be divided into following four broad categories:

First, those who formed the hardcore nucleus which took the decision to assassinate Rajiv Gandhi.

Second, those who induced others to join the ring and played active as well as supervisory roles in the conspiracy.

Third, those who joined the conspiracy by inducement whether through indoctrination or otherwise.

Fourth those among the conspirators who participated in the actual commission of murder.

1608. After defining the above categories, the Hon'ble Apex Court further held that "persons who fall within the first category cannot normally escape from capital punishment if their case ends in conviction."

1609. Bearing the above principles in mind, now let us determine what should be the quantum of sentence as far as the five accused convicts namely Jagtar Singh Hawara, Gurmit Singh, Lakhwinder Singh, Shamsher Singh and Balwant Singh, who have been convicted for commission of an offence punishable under Section 302 read with Section 120-B IPC, besides some other offences, are concerned.

1610. Before taking this issue, let us consider one more plea which goes to the root of the case as far as the quantum of sentence, is

concerned, in this regard, the learned counsel for the convicts submitted that the Hon'ble Apex Court in **Shahdeo's case (supra)** and **Alok Nath Datta's case (supra)** held that in a case based on circumstantial evidence, ordinarily death penalty should not be awarded.

1611. However after going through the principles laid down in **Shahdeo's case (supra)** by the Hon'ble Apex Court, it comes out that as submitted by learned Public Prosecutor, it was nowhere laid down that in all cases based on circumstantial evidence, the death penalty cannot be imposed. On the other hand, in that case, there was no clear evidence as to by the use of whose fire arms, all the six deceased persons died as a result of firing in the bus and because of those lapses and the peculiar circumstances, it was held that it is not a case of rarest of rare category.

1612. However, the Hon'ble Apex Court further cautioned that the view taken in the case is based on the peculiar circumstances of the case and it should not be understood to mean that the accused persons cannot be convicted under Section 302 read with Section 120-B IPC and the death penalty cannot be imposed in the absence of various overt acts by individual accused person. Thus it was nowhere held that in a case of circumstantial evidence, the death penalty cannot ordinarily be

imposed. The same proposition was laid down in **Alok Nath Datta's case (supra)**.

1613. Before proceeding further, let us consider another plea of the learned counsel for the convicts, justifying the commission of this killing by the convicts. As per learned defence counsel Late Beant Singh was guilty of killing of thousands of innocent Sikhs and commission of multifarious atrocities to the Sikh Community by indulging in fake encounters and by implicating in false cases, as has been deposed by DW-17 Paramjit Kaur and as such the assassin Dilawar Singh was having no other option but to kill him and all this has been done by him for sake of his community. And as such these facts be kept into consideration while sentencing them.

1614. To be more precise, the relevant portions of the written explanation given by convicts Gurmeet Singh, Lakhwinder Singh and Jagtar Singh Hawara in this regard are reproduced for ready reference:

"Beant Singh came to power by securing votes to the extent of mere 6% as the other major political parties boycotted the elections. From this fact, it is apparent that out of 100 voters in 1992 on the basis of which late Beant Singh formed his Government. Nowhere in the democratic world has such an unrepresentative and illegitimate set up

come into existence. Beant Singh represented no one in the Punjab and was a tool in the hands of the Central Government. He was made to govern the Punjab so as to remain a political figure head. The State was actually governed by the police junta of that time headed by K.P.S.Gill, Director General of Police, Punjab and his handlers at the Centre. Thus during the period of Beant Singh as Chief Minister and upto his death there were countless false encounters wherein innocent Sikhs were killed."

1615. Then they justified the crime by saying that:

"Keeping in view the political, social, religious and other circumstances in view, it has to be accepted that the killing of Beant Singh was not for any personal reasons. The killings of innocent persons in false encounters, tortures, custodial deaths, forced disappearances and raping of the women by the police personnel was a strong motivation for a self respecting man to do something to protect the society and the answer to oppression came in the shape of late Dilawar Singh. It is the story of the prosecution itself that the motivating factor for Dilawar Singh was the above referred unlawful and most uncivilized atrocities of Beant Singh and his government. Rulers of the day are not prepared to admit that there was no other way of putting an end to the above referred illegal acts of late Beant Singh and his government. There was no other alternative. When the human system fails as it failed during the Rule of Beant Singh, then the divine takes over. So, the killing of late Beant Singh was not a

pure and simple murder but a divine killing that has been done by all incarnations worshipped in India. Thus, the convicts are to be given sentence keeping in view the above instances in views as none was motivated by worldly gain. This killing was for restoring self respect. The Sikh history has examples of many such instances in the past."

1616. No doubt while saying so, the learned counsel for the convicts has referred only the name of deceased Dilawar Singh but the contention itself shows that it has been put forward as a justification for the commission of this crime which is already held to be a hand-work of convict Jagtar Singh Hawara, who being the king-pin of this conspiracy, planned and executed the same and even Dilawar Singh deceased has been used as a tool by exploiting his religious sentiments under wrongful beliefs. And thus, this killing was not the sole and personal plan of assassin Dilawar Singh but it was in execution of a pre-planned and meticulously executed conspiracy.

1617. However whatever may be the intention of the learned counsel for the convicts while saying so, but it certainly shows that a plea of admission of commission of crime with a strange justification has been put forward at this stage and the same cannot be considered as a justified plea, what to talk of a mitigating circumstance, as alleged by the learned counsel for the convicts.

1618. In this regard, we can draw the support from the findings of the Hon'ble Apex Court in **Kehar Singh Vs. State (supra)**, known as **Indira Gandhi murder trial**, where also the theory of resentment of the Sikh community against the operation known as '**Blue Star Operation**', was pressed into service to justify the killing of Late Prime Minister Smt. Indira Gandhi, as is a justification in the present case, but the same was deprecated by the Hon'ble Apex Court saying that the killing of Indira Gandhi is not simply the murder of a human being but it is the crime of assassination of the duly elected Prime Minister of the country. The motive for the crime may not be personal but the consequences of the action taken cannot be justified on the alleged defence.

1619. On the contrary, the Hon'ble Apex Court held that the justification is misconceived by cautioning that:

"in our Democratic Republic, if the Government becomes subversive of the purpose of its creation, the people will have the right and duty to change it by their irresistible power of ballot and have the Government of their own choice wisely administered. But no person who is duly constituted shall be eliminated by privy to conspiracies. Indian Citizens are committed to the Constitution. They have faith in the ballot box. They have confidence in the democratic

institutions. They have respect for constitutional authorities."

1620. Perhaps the above-mentioned note of caution laid down by the Hon'ble Apex Court in **Kehar Singh's case (supra)** regarding the justification of the killing, as is also pressed into service in the present case, is the answer to the plea raised by the learned counsel for the convicts. Similarly again in **State of Tamil Nath Vs. Nalini's case (supra)**, the Hon'ble Apex Court reiterated that political decisions taken by an elected head of the State, even if not suits anybody, is not a justified ground to murder such a person and cannot be a mitigating circumstance in a prosecution for the murder of such a person.

1621. Thus, as per the above discussed legal principles, the endeavour made by the learned counsel for the convicts, justifying this killing, is not only unconvincing but also not a circumstance, what to talk of a mitigating circumstance, which can be taken into consideration for any purpose whatsoever.

1622. On the contrary, if such an explanation is accepted, it will amount to allowing the feudal policy of tooth for tooth and eye for eye and everybody will start taking law in his own hand to settle ones' own disputes or even the

disputes of a community at a large. And this will also be against the preamble of the Constitution under which, we the People of India believe in the unity, integrity and sovereignty of India, and suppose to redress our grievances of any type within the frame work of the law of the land and by not taking the law in our own hands.

1623. Our Constitution has provided a complete machinery to settle all types of disputes within the frame work of law including the inter-state disputes and the disputes to uphold and protect the fundamental rights of every citizen of India. Even it is brought on record that the Hon'ble National Human Rights Commission, which is entrusted with the constitutional duty to protect the fundamental rights of every citizen of India, has already intervened and ordered a full-fledged enquiry by a retired Judge of the Hon'ble Punjab & Haryana High Court, to look into all the complaints as were made regarding the killing of innocent persons in false encounters and other atrocities committed by the police and Government machinery and this was the legal and proper remedy available within the parameters of law and by no stretch of imagination, the justification put-forward by the convicts, can be considered as a solution to the problem, which cannot be denied to be a ingenuine grievance.

1624. Now coming to the merits of controversy. Let us consider a balance sheet of the aggravating and the mitigating circumstances to decide the dispute of quantum of sentence. However before considering these circumstances, since it was also a case of conspiracy involving different role of different accused persons at different stages, it will be justified if we also categorise the conspirators i.e. the convicts into different categories, as per the role played by them and the gravity of the same, as per the principles laid down by the Hon'ble Apex Court in **State of Tamil Nadu Vs. Nalini's case supra.**

1625. Accordingly keeping in view the findings on the points for determination leading to the conviction of the convicts, which is based on the evidence led by the prosecution, it comes out that the conspirators in the present case, can be vivisected into only two categories, keeping in view their role in the planning and execution, firstly, those who formed the hardcore nucleus which took the decision to assassinate S.Beant Singh and masterminded and co-ordinated it and the secondly, those who joined the conspiracy by inducement or instigation etc., whether through indoctrination or otherwise.

1626. Accordingly, when the evidence and the findings as to the above two categories, were

applied to the convicts involved, it comes out that as far as accused Jagtar Singh Hawara and Balwant Singh are concerned, they are the conspirators of the first category, as they were the part and parcel of the hardcore nucleus, which took the decision to eliminate S.Beant Singh along with certain other accused persons, who have not been arrested being being settled in different countries.

1627. At the same time, it is also proved on the file that both these convicts were the first persons who agreed to kill S.Beant Singh and they hatched the conspiracy by planning the entire details and by using the remaining accused persons for different acts at different times and at different places as per the availability and the utility of that person by inducing and instigating them to join the conspiracy, by playing with their religious sentiments, in view of the prevailing situation of the State of Punjab at that time. They used deceased Dilawar Singh as a human bomb by instigating him. Then they used accused Shamsher Singh for procuring RDX. They also used convict Lakhwinder Singh, who was having an easy access to the Secretariat to supervise the movements and to know the programmes of S.Beant Singh and lastly they used accused Gurmit Singh and his house for the final stage of their conspiracy i.e. to prepare the bomb and to connect the circuit to detonate the

bomb as he was an Electrical Engineer.

1628. However, all the remaining three convicts i.e. Lakhwinder Singh, Gurmit Singh and Shamsher Singh, can be classified as the conspirators of the second category, as they were induced and instigated by the main convicts to join the conspiracy and to aid and abet them to achieve the target. However these convicts failed to conceive that the conspiracy, which they are going to join will not only commit a crime against a particular person but it will also involve innocent persons for no fault of them besides creating so many problems for them and their families.

1629. Thus keeping in view the above classification, as far as convicts Jagtar Singh Hawara and Balwant Singh are concerned, as per the principles laid down by the Hon'ble Apex Court in **State of Tamil Nadu Vs. Nalini's case (supra)**, both these accused convicts being the conspirators of the first category, cannot escape from the extreme punishment of capital sentence and even after comparing the aggravating and mitigating circumstances, qua both of these convicts, it comes out that there are more aggravating circumstances against them than the mitigating circumstances.

1630. First of all, as far as accused Balwant Singh is concerned, no doubt, he has very

fairly and honestly confessed the commission of the crime but the justification put forward by him is already found to be far from the truth of the alleged justification. At the same time, throughout the proceedings, he kept on saying that he has no faith in the Constitution and the legal frame work of India and that he has no remorse for killing S.Beant Singh and while saying so, he forget that what was the fault of 16 innocent persons, who also became victims of his crime.

1631. Not even this, both these convicts were fully knowing that the mode chosen by them and their co-conspirators for killing Beant Singh with the help of a bomb involving special category high explosives like RDX and PETN, was itself sufficient to show that it will result into much more than what has been expected by them, rather it was so dangerous that in all probabilities, it will result into a huge loss of life and property in a brutal and gruesome manner and all this was master minded and co-ordinated by accused Jagtar Singh Hawara convict with the help of Balwant Singh convict. This is the most aggravating circumstance which weigh in the mind of this court while considering the sentence to both these convicts.

1632. In **Holiram Bordoloi Vs. State of Assam, (supra)**, in a case of similar facts and circumstances, where also the accused when held

guilty pleaded no remorse, the Hon'ble Apex Court also affirming the death penalty, held that:

"Even when questioned under Section 235(2) of Criminal Procedure Code, the accused stated that he had nothing to say on the point of sentence. The fact that the appellant remained silent would show that he has no repentance for the ghastly act he committed."

1633. Besides this, one more aggravating circumstance against convict Jagtar Singh Hawara is that he planned a successful escape from this Jail, where this Court is now trying this case, along with his co-accused persons and one of this co-accused Jagtar Singh Tara who also escaped with him, is still at large, and this act and conduct of this convict proves him to be a conspirator of the first category, who deserves no leniency.

1634. Even it is alleged by the prosecution that after escaping from the Jail, he did not stop his criminal activities and was involved in three cases at Delhi out of which two are under sections 302, 307 IPC etc. and the third one is under section 121, 121-A IPC etc. Besides this, he is also involved in more than 11 cases under different sections at different places in Punjab and Chandigarh. And thus there is no probability of the reformation and rehabilitation of both these convicts and there is every probability that they

will again indulge in similar crimes and thus are a continuing threat to the society.

1635. Not even this, as mentioned earlier, this convict in his written explanation, has justified the killing of S.Beant Singh and other innocent persons, with a totally misconceived justification which is already held to be not tenable and he even expressed no remorse for this killings, but alleged that the killing of S.Beant Singh was not a pure and simple murder but a divine killing and thereby compared himself with the divine powers, which again in the peculiar facts and circumstances, an aggravating circumstance, coupled with the fact that it was he, who had masterminded and coordinated this killings.

1636. Thus the above facts clearly spell out that there are more aggravating circumstances than the mitigating circumstances against convicts Jagtar Singh Hawara and Balwant Singh. Needless to say that the blast caused by the accused convicts results into death of 17 persons and thus is enormous and itself an instance of extremely diabolical and committed in a dastardly manner which arouse intence and extreme indignation of the society.

1637. At the same time, as held in **State Vs. Navjot Sandhu's case (supra)**, the very idea of

killing the chief minister in the Secretariat by using a bomb made of RDX etc. and causing explosion imperiling the safety of a multitude of employees and other elected representatives, in this conspiracy, which was master minded by both these convicts that too in a preplanned and meticulous manner.

1638. As far as the plea of delay in the trial is concerned it is not a mitigating circumstance because the defence is also equally responsible for the delay and at the same time it is also not a ground to show any leniency as held by the Hon'ble Apex Court in **Pratap Singh Vs. State of Jharkhand's case (supra)**.

1639. Thus from the above facts one thing is clear that as far as both these accused convicts persons are concerned, the gravity of the crime conceived by the these conspirators with the potential of causing enormous casualties and dislocating the functioning of the Government as well as disrupting normal life of the people of the State, is something, which cannot be described in words. The incident, which results in heavy casualties, had shaken the conscience of the entire State and the collective conscience of the society will only be satisfied if the capital punishment is awarded to both these convicts. Hence for these special reasons, both the above convicts deserve

only and only extreme punishment.

1640. However, as far as the remaining three convicts namely Lakhwinder Singh, Gurmit Singh and Shamsher Singh are concerned, they are found to be conspirators of the second category, who have been induced and instigated by the conspirators of the first category, to join this conspiracy and to do different acts of omission and commission, which they did accordingly and thus they are also liable for the punishment in this regard but while doing so, there are certain favourable mitigating circumstances, which justify their plea for lesser sentence in comparison to the conspirators of the first category.

1641. First of all, as argued by the learned counsel for these convicts, they are not previous offenders or criminals as no such evidence has been brought on the file by the prosecution against them. Secondly, they joined the conspiracy at a later stage, that too, for a single act by the instigation and goading of the main conspirators of the first category, by exploiting their religious sentiments. Even convict Shamsher Singh apart from helping convict Jagatr Singh Hawara for bringing RDX, has not played any other role or committed any other overt act, which in the facts and circumstance of this case, can be considered as a mitigating circumstances as far as the quantum of

sentence is concerned.

1642. Above all, there is also nothing on the file to say that these convicts were the previous offenders or involved in any other criminal activities and as such there is no possibility of their reformation and rehabilitation. On the contrary, their act and conduct coupled with their roles forces this court to say that atleast these three convicts can be reformed and rehabilitated as a responsible citizen of India.

1643. This court is not oblivious of the settled proposition of law that the criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the judge in arriving at a sentence in each case, presumably to permit sentences that reflects more subtle considerations of culpability that are raised by the special facts of the each case and each accused even if they are convicted for the same offence. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Some times it is the correctional needs of the perpetrator that are offered to justify a sentence. Some times the desirability of

keeping him out of circulation, and sometimes even the terrific results of his crime.

1644. Thus after taking an over-all view of the circumstances, in the light of the aforesaid propositions and taking into account the answers to the questions posed by way of the test for the rarest of the rare cases, the circumstances of the present case are such that as far as convicts Jagtar Singh Hawara and Balwant Singh, are concerned, they are proved to be the conspirators of first category, who had masterminded and executed this conspiracy with meticulous details and are beyond reformation and rehabilitation and thus a threat to the society and only death penalty would be the answer to the crime committed and perpetuated by them by playing with sentiments of the other accused persons. Whereas the remaining three convicts are proved to be the members of the second category, who were induced and instigated to commit this crime and thus deserves lessor sentence.

1645. Now coming to the sentence qua Nasib Singh, it comes out that as held earlier, he has no concern whatsoever with the conspiracy and this killings. On the contrary, he has been a victim of hostile circumstances and kept the RDX in his house without knowing and perceiving its dangers to the society. At the same time, he is an old man of 63

years of age and being at the fag end of his life, he deserves leniency specially when he has already undergone a custody of about 12 years during the pendency of this trial even not being a part and parcel of this conspiracy.

1646. As a sequel to the above discussion, all the convicts are sentenced as follows:

Name of accused	Under Section	Sentenced to

1.Nasib Singh	5 (b) of Explosive Substances Act.	To undergo rigorous imprisonment for 10 years and to pay a fine of Rs.10,000/- failing which to further undergo simple imprisonment for three years.
2.Balwant Singh and Jagtar Singh Hawara	i) 302 r/w S.120-B IPC	Sentenced to death and both of them be hanged by neck till they are dead. They are also sentenced to pay a fine of Rs.7,000/- each, and in default of payment of fine, to further undergo simple imprisonment for a period of three years each.

- ii) 307 r/w S.120-B IPC. rigorous imprisonment for 10 years and to pay a fine of Rs.5,000/- each, and in default of payment of fine, to further undergo simple imprisonment for a period of three years each.
- iii) 306 r/w S.109 r/w S.120-B of IPC. rigorous imprisonment for 10 years and to pay a fine of Rs.5,000/- each, and in default of payment of fine, to further undergo simple imprisonment for a period of three years each.
- iv) 3 (b) r/w S.6 of Explosives Substances Act. rigorous imprisonment for life and to pay a fine of Rs.5,000/- each & in default of payment of fine, to further undergo simple imprisonment for a period of three years each.
- v) 4(b)(ii) r/w S.6 of Explosives Substances Act. rigorous imprisonment for 10 yrs and to pay a fine of Rs.5,000/- each & in default of payment of fine, to further undergo simple imprisonment for a period of three years each.

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|---|---|
| vi) 5 (b)
r/w S.6 of
Explosives
Substances
Act. | rigorous imprisonment
for 10 yrs and to pay
a fine of Rs.5,000/-
each & in default of
payment of fine, to
further undergo
simple imprisonment
for a period of
three years each. |
| 3. Gurmit Singh i)302 r/w
Lakhwinder 120-B IPC.
Singh, and
Shamsher
Singh | imprisonment for
life (each) and to
pay a fine of
Rs.10,000/- each, and
in default of payment
of fine to further
undergo simple
imprisonment for
three years each. |
| ii) 307 r/w
S.120-B IPC. | rigorous imprisonment
for 10 years and to
pay a fine of
Rs.5,000/- each,
and in default of
payment of fine, to
further undergo
simple imprisonment
for a period of
three years each. |
| iii) 306 r/w
S.109 r/w
S.120-B of
IPC. | rigorous imprisonment
for 10 years and to
pay a fine of
Rs.5,000/- each,
and in default of
payment of fine, to
further undergo
simple imprisonment
for a period of
three years each. |

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| iv) 3 (b)
r/w S.6 of
Explosives
Substances
Act. | rigorous imprisonment
for life and to pay
a fine of Rs.5,000/-
each & in default of
payment of fine, to
further undergo
simple imprisonment
for a period of
three years each. |
| v) 4(b) (ii)
r/w S.6 of
Explosives
Substances
Act. | rigorous imprisonment
for 10 yrs and to pay
a fine of Rs.5,000/-
each & in default of
payment of fine, to
further undergo
simple imprisonment
for a period of
three years each. |
| vi) 5 (b)
r/w S.6 of
Explosives
Substances
Act. | rigorous imprisonment
for 10 yrs and to pay
a fine of Rs.5,000/-
each & in default of
payment of fine, to
further undergo
simple imprisonment
for a period of
three years each. |

1647. Since accused convict Nasib Singh has already undergone the sentence awarded, as such, as per the provisions of Section 428 of the Cr.P.C., he be released, if not required in any other case, subject to depositing of the fine.

1648. All the sentences awarded to the remaining accused persons shall run concurrently. The period of custody already undergone by these convicts during the pendency of this trial will be set-off against the substantive sentence, as per the provisions of Section 428 Cr.PC. As far as the word "imprisonment for life" used in this order is concerned, as held by the Constitutional Bench of the Hon'ble Apex Court in **Gopal Vinayak Godse Vs. State of Maharashtra, AIR 1960 S.C. 600** and as reiterated by the Hon'ble Apex Court in **Mohd. Munna Vs. Union of India 2005 Cr1.L.J. 4124**, the word "imprisonment for life" must be treated as rigorous imprisonment for the whole of the remaining period of the convict persons natural life.

1649. Let reference as per the provisions of Section 366 Cr.PC be made to the Hon'ble High Court for the confirmation of death sentence of accused-convicts Jagtar Singh Hawara and Balwant Singh along with the proceedings of the case. Till then, both these accused convicts stand committed to custody as per the provisions of Section 366 (2) of the Cr.PC.

1650. Necessary warrant be prepared and forwarded to the Superintendent, Model Jail, Burail, Chandigarh, against all the accused

convicts as per the details and directions given above. Copy of the judgment be supplied to all the convicts free of costs as per law.

1651. File be consigned to records after due compliance.

Pronounced in the open court at Burail Jail, on July 31, 2007 at Chandigarh.

***(Ravi Kumar Sondhi),
Additional Sessions Judge,
Camp at Burail Jail,
Chandigarh.***